



Senate Committee On
BANKING AND INSURANCE

Bill Posey, Chair
Gwen Margolis, Vice Chair

Meeting Packet

Tuesday, April 20, 2004

1:15 p.m. – 3:15 p.m.

Room 110, Senate Office Building

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

E X P A N D E D A G E N D A

COMMITTEE ON BANKING AND INSURANCE

Senator Posey, CHAIR
Senator Margolis, VICE-CHAIR

DATE: Tuesday, April 20, 2004

TIME: 1:15 p.m. -- 3:15 p.m.

PLACE: Room 110 (EL), Senate Office Building

(MEMBERS: Senators Alexander, Atwater, Campbell, Diaz de la Portilla, Dockery, Geller, Lawson, Lee, Miller and Peaden)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 0528 Regulated Industries / Pruitt et al (Similar H 0323, Compare H 0253)	Funeral & Cemetery Services; establishes Funeral, Cemetery, & Consumer Services Div. & Board of Funeral, Cemetery, & Consumer Services within Financial Services Dept; creates Board of Funeral, Cemetery, & Consumer Services; revises requirements for funeral establishment; revises cremation requirements for cinerator facilities re simultaneous cremations, body parts, cremation containers, & cremation chamber; provides for approval of preneed contracts by board, etc. Amends FS.	
		RI 03/17/04 CS BI 04/20/04	
2	SB 3012 Campbell (Similar H 0955)	Judgment Liens; revises provisions re satisfaction of judgments & decrees; eliminates authority of judges to act under these provisions when there is no clerk of court; revises procedures for acquiring such lien; revises provisions re foreign judgments to apply only to out-of-country foreign judgments; revises provisions re designation of homestead property by owner prior to levy to include foreign judgments, etc. Amends Chs. 55, 56, 222.01, 319.27, 679.1021.	
		JU 04/12/04 FAVORABLE BI 04/20/04 AAV AP	
3	SB 2688 Campbell (Similar H 1327)	Guardianship; authorizes guardian of property of incapacitated person to contest validity of trust before it becomes irrevocable; requires court to determine whether there is alternative to guardianship if person is determined incapable of exercising his or her delegable rights; requires that validity of ward's durable power of attorney, trust, or trust amendment be reported in guardianship proceedings, etc. Amends Ch. 744, 737.2065.	
		JU 03/22/04 FAVORABLE WITH AMEND CF 04/13/04 FAVORABLE BI 04/20/04 AAV AP	1

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TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 0520 & CS/SB 494 Comprehensive Planning / Constantine et al (Similar H 0911, CS/S 0494, Compare H 0261, CS/S 1586)	Florida Building Code; (THIS BILL COMBINES S520,CS/494) creates Swimming Pool & Solar Technical Advisory Committee of Fla. Building Commission; provides legislative intent re interpretation of said code; provides for commission to resolve disputes reinterpretations of code; provides conditions for use of private plans review & inspection; authorizes commission to conduct proceedings to review decisions of local officials, etc. Amends FS. CP 03/29/04 CS HC HC 04/02/04 WITHDRAWN RI 04/14/04 WITHDRAWN BI 04/20/04 FT AGG ATD AP	
5	CS/SB 2092 Judiciary / Villalobos et al (Linked S 2090, Compare H 1287, H 1289)	Financial Protection for Elderly Act; provides legislative intent; provides that financial exploitation of elderly person is unlawful; provides jurisdiction in case of death of elderly person; provides that certain persons may bring action on behalf of elderly person under act; authorizes Attorney General to conduct investigation & bring civil suit in circuit court for violation of act; provides that punitive damages may not exceed certain amount, etc. Creates 410.701-.705. JU 03/22/04 CS HC 03/24/04 WITHDRAWN ACJ 03/24/04 WITHDRAWN AP 03/24/04 WITHDRAWN HC 03/30/04 FAVORABLE WITH AMEND BI ACJ AP	2
6	SB 2090 Villalobos et al (Linked CS/S 2092, Similar H 1289, Compare H 1287)	Elder Victims Trust Fund; creates said trust fund within Elderly Affairs Dept.; provides for sources of moneys & purposes; provides for annual carryforward of unused funds; provides for future review & termination or re-creation of trust fund. Creates 410.706. JU 03/22/04 FAVORABLE WITH AMEND HC 03/24/04 WITHDRAWN AHS 03/24/04 WITHDRAWN AP 03/24/04 WITHDRAWN HC 03/30/04 FAVORABLE WITH AMEND BI ACJ AP	1 1

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TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 2122 Atwater (Similar H 0565)	Public Records & Meetings Exemptions; exempts from public records & public meetings requirements certain records of Florida Self-Insurers Guaranty Association, Incorporated, & meetings of board of directors of association; provides for future legislative review & repeal; provides findings of public necessity. Creates 624.465.	
		BI GO RC	

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 528

SPONSOR: Regulated Industries Committee, Senator Pruitt and others

SUBJECT: Funeral & Cemetery Services

DATE: April 19, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Emrich <i>XRE</i>	Deffenbaugh <i>DP</i>	BI	
3.				
4.				
5.				
6.				

I. Summary:

CS for SB 528 creates the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services. It establishes the composition, powers, and duties for the Board of Funeral, Cemetery and Consumer Services (new board). The new board would be composed of 10 members, who would be appointed by the governor from nominations made by the Chief Financial Officer (CFO). The new board would enforce the provisions of chs. 470 and 497, F.S., and the provisions of ch. 455, F.S., that are necessary to enforce the provisions of ch. 470, F.S.

The bill creates the Division of Funeral, Cemetery, and Consumer Services (new division) within the Department of Financial Services (DFS). The director of the new division would be appointed by, and serve at the pleasure of, the CFO. The director serves as the executive director of the new board. The director would be responsible for the preparation of the new board's agenda, the presentation of division staff recommendations, reporting the activities of the division to the new board, and performing such other duties as may be assigned by CFO.

The bill would transfer the statutory powers, duties, functions, records, personnel, property, and unexpended balances of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services to the new board.

The bill defines new terms and clarifies current terms, used in chs. 470 and 497, F.S. The bill provides standards for adult grave spaces. It requires that a licensed cemetery prepare a map documenting establishment of recoverable internal survey reference markers. It provides identification requirements for human remains interred, entombed, scattered, or otherwise placed for final rest at licensed cemeteries after October 1, 2003. The bill provides that a licensed cemetery company may rely entirely on the identity stated on the burial transmit permit or on the

identification supplied by a person licensed under ch. 470, F.S. It exempts from the 30-day refund requirement for cancelled contracts those amounts allocable to any burial rights, merchandise, or service that have been used by the purchaser. It authorizes the board to perform procedures it deems necessary incident to the surrender of a certificate of authority.

The bill increases from one to three years the period that an embalmer apprentice may serve in an apprentice capacity. The bill amends requirements relating to the practice of direct disposal. The bill establishes additional requirements for direct disposal establishments and operators of cinerators, including reporting, equipment, and business practice requirements. It provides for the direct disposal of fetal remains, including remains from fetal deaths of less than 20 weeks gestation. It increases from three to six the maximum number of classroom hours of continuing education needed for renewal of a direct disposer registration.

The bill provides for the proper identification of dead human remains in the casket, alternative container, or cremation container. It provides that all contracts with the public must be approved by the DFS and must include a complete description of any monument, marker or related product.

The bill provides for the regulation of monument establishments, and requires that they operate with a certificate of authority. It provides requirements for the operation of monument establishments, including minimum square footage requirements, and minimum net worth requirements. The bill provides for the regulation of preneed contract sales by monument establishments, including requiring a certificate of authority to conduct preneed sales.

The bill requires that multiple claims for a body must be prioritized in accordance with inheritance rules. It provides that an “unclaimed” body is one that is not claimed by a legally authorized person for interment at that person’s expense. It provides that indigent relatives may claim a body in a manner consistent with the policy of the agency in possession or control of the body, and defines the term “indigent” to mean income at or below 100 percent of the federal poverty level.

This bill amends the following sections of the Florida Statutes: 20.121, 20.165, 406.50, 406.53, 455.2226, 470.002, 470.0085, 470.018, 497.021, 470.024, 470.025, 470.0255, 470.028, 470.029, 470.031, 470.0355, 497.005, 497.101, 497.105, 497.305, 497.325, 497.333, 497.361, 497.405, 497.419, and 497.436.

This bill creates the following sections of the Florida Statutes: 497.102, 497.1021, 497.1022, 497.306, 497.307, 497.365, 497.371, 497.379, 497.385, 497.391, and 497.395.

This bill repeals the following sections of the Florida Statutes: 470.003, 497.107, and 497.109.

This bill reenacts section 470.036 of the Florida Statutes.

This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Chapter 470, F.S., regulates funeral directors, embalming, and the practice of cremating human remains. The Board of Funeral Directors and Embalmers, which consists of five members, within the Department of Business and Professional Regulation (DBPR) administers and enforces the provisions of ch. 470, F.S. According to the DBPR, the board regulates approximately 5,000 individuals and establishments in funeral related services.

Chapter 497, F.S., is known as the Florida Funeral and Cemetery Services Act (act). The act regulates cemeteries, cremation services, cemetery companies, and preneed contracts for funeral merchandise or services. The Board of Funeral and Cemetery Services, which consists of seven members, within the Department of Financial Services (DFS) administers and enforces the provisions of the act.

Definitions

Section 470.002 (7), F.S., defines a “funeral establishment” as:

[A] facility licensed under this chapter where a funeral director or embalmer practices funeral directing or embalming.

Section 470.002 (14), F.S., defines a “cinerator” as:

[A] facility where dead human bodies are reduced to a residue, including bone fragments, by direct flame, also known as “cremation,” or by intense heat, also known as “calcination.”

Section 497.005, F.S., defines a “cemetery” as:

[A] place dedicated to and used or intended to be used for the permanent interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated human remains; or any combination of one or more of such structures or places.

Section 497.005(30), F.S., defines a “preneed contract” as:

...any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.

Section 470.002(21), defines “preneed sales agent” as:

[A]ny person who is registered under chapter 497 to sell preneed burial or funeral service and merchandise contracts or direct disposition contracts in this state.

Licensure of cemeteries

Section 497.405, F.S., requires a certificate of authority for a cemetery engaged in the practice of selling services, merchandise, or burial rights on a preneed basis. Cemetery companies existing before October 1, 1993, are exempt from this requirement. Also exempt, in counties with a

population of at least 960,000 persons on July 1, 1996, are sales of specified services and merchandise by religious-institution-owned cemeteries to their members and families, provided that the cemetery was engaged in the sale of preneed contracts before October 1, 1993, and maintains a positive net worth at the end of each fiscal year. According to the DFS there are 171 licensed cemeteries in Florida. According to the representative for the Funeral and Cemetery Alliance of Florida there are over 4,000 unlicensed cemeteries in Florida.

Registration of monument establishments

Section 497.361, F.S., provides for the registration of monument establishments. Monument establishments must pay a \$200 registration fee and a \$150 fee biennial renewal fee. A monument establishment is defined by s. 497.005, F.S., as:

[A] facility that operates independently of a cemetery or funeral establishment and that offers to sell monuments or monument services to the public for placement in a cemetery.

Preneed sales

Section 497.405, F.S., requires a certificate of authority to conduct preneed sales for services, merchandise, or burial rights. Section 497.407, F.S., requires certificateholders to annually file a statement on his or her financial condition, transactions, and affairs. The application fee for a certificate of authority is \$500. Renewal fees range from \$500 to \$18,500 depending on the number of preneed contracts that the certificateholder sells during the preceding year.

Background

A joint examination by the Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General questioned the effectiveness of Department of Banking and Finance's (DBF) oversight of cemetery companies and preneed sellers, and recommended that the administration of ch. 497, F.S., be transferred to DBPR.¹ Specifically, OPPAGA found that DBF's examination process needed improvement, state law did not sufficiently ensure consumer protection, and the state's regulation of the death care industry was unnecessarily fragmented. OPPAGA recommended the following statutory changes:

- Amend s. 497.002, F.S., to require the department to place equal emphasis on regulating cemeteries and preneed funeral sales.
- Amend s. 497.133, F.S., to establish minimum disciplinary actions for the most serious violations of the law.
- Amend s. 497.119, Florida Statutes, to designate which violations are intended to be mediation offenses.
- Amend s. 497.201, F.S., to require cemetery companies to survey and plat cemetery grounds and submit a detailed map for approval by the department or board.
- Amend s. 497.333, F.S., to require licensed cemeteries to provide consumers with a cemetery map and physical description of the purchased burial plot and to display posters

¹ OPPAGA, *Florida's Regulation of the Death Care Industry Has Many Weaknesses*, Report No. 02-21, March 2002.

and brochures that describe how the death care industry is regulated and how to file complaints.

In its recent progress report on its earlier recommendation, OPPAGA advised that it continued to support its earlier recommendations, including the recommendation that the Legislature consolidate the regulation of the death care industry into a single agency, with the existing boards combined into one.²

A group of industry representatives formed the Legislative Partnership Committee of 2003 (LPC03) to work towards consensus on a number of funeral and cemetery regulation issues. The LPC03 was composed of representatives of the Florida Funeral Directors' Association, the Florida Funeral & Cemetery Alliance, and the Florida Morticians Association. After many discussions, the LPC03 compiled its legislative recommendations into report form. The report contained many consensus issues. The LPC03 also recommended that the provisions of chs. 470 and 497, F.S., should be merged into one chapter.

The Independent Funeral Directors Association of Florida, the Florida Monument Builders Association, and the Florida Funeral & Cemetery Advocacy formed a coalition called the Funeral Consumer Protection Alliance (FCPA). The FCPA has proposed additional measures, including originally recommending the transfer of regulatory authority over ch. 497, F.S., from the DFS to the DBPR. Now the FCPA recommends the transfer of regulatory authority over ch. 470, F.S., from the DBPR to the DFS.

The industry recommendations formed the basis for several bills introduced during the 2003 Regular Session. These bills included SB 2016 by Senator Pruitt and the similar HB 495 by Representative Brown. SB 2016 made numerous changes to ch. 497, F.S. During the course of the Regular Session, the bill was amended to include changes to ch. 470, F.S., and to combine the regulatory boards into one board housed in the Office of the Chief Financial Officer. The bill passed the Senate, but died on the House Calendar on third reading.

In August, 2003, the Board of Funeral Directors and Embalmers voted to oppose the merger of the boards under the DFS. In September, 2003, the board voted that, in the event of a merger, the combined board should be under the DBPR.

Interim Project Report 2004-159

Senate Interim Project report 2004-159 examined the appropriate manner by which to combine the regulatory functions of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services within one agency.

The report found that the merger of the boards was complicated by the differences between the boards' governing statutes. Chapter 497, F.S., contains all of the relevant regulatory provisions needed by the Board of Funeral and Cemetery Services for the effective regulation of that chapter, i.e., provisions relating to administration of the board, enforcement, rulemaking, investigative authority, and disciplinary proceedings. Conversely, the Board of Funeral Directors

² OPPAGA, *Improvements to Death Care Industry Still Needed*, Report No. 04-17, February 2004.

and Embalmers must comply with provisions in ch. 455, F.S., as well as ch. 470, F.S., to complete its statutory framework. Chapter 455, F.S., sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR, and pursuant to s. 455.017, F.S., the provisions of this chapter are exclusively administered by the DBPR for the regulation of professions.

With few exceptions, most of ch. 455, F.S., is directly applicable to the functions and powers of the Board of Funeral Directors and Embalmers, or to the duties and rights of the professions regulated by that board. Consequently, any merger of the two boards must account for the provisions of ch. 455, F.S., and insure that the new combined board would be, in regard to its administration of ch. 470, F.S., able to continue to perform the functions and exercise the powers currently performed and exercised by the Board of Funeral Directors and Embalmers without altering the current rights and duties of its regulated professions. The interim report found that the extent of a combined board's authority would be clarified by duplicating relevant provisions in ch. 455, F.S., for the exclusive jurisdiction of a combined board.

The interim report recommended that, should the Senate take action to merge the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services, the Senate consider the following means by which to achieve that goal:

- Provide for a type two merger of the boards pursuant to s. 20.06, F.S.
- If the boards are merged into a department other than the DBPR, duplicate the provisions in ch. 455, F.S., for the combined board to effectively administer and enforce the provisions in ch. 470, F.S.
- Merge chs. 470 and 497, F.S., into a single chapter with each profession or service placed in a separate part that corresponds to the current chapter divisions.
- Combine into one part of the new combined chapter all of the powers and functions needed by the combined board for the administration of all the professions and services within its jurisdiction, including organization of the board, rulemaking authority, disciplinary procedures, and powers to administer oaths, take depositions, and issue subpoenas.
- The combined board's power to issue subpoenas, including subpoenas duces tecum, and to administer oaths should be identical for all the professions and services under its jurisdiction, and should utilize the more extensive authority found in s. 497.123, F.S.
- Provide the department that will house the combined board with sufficient resources to facilitate the transfer and/or integration of records and computerized data into its license management system.

Type Two Transfer

Section 20.06, F.S. provides for the reorganization of government agencies by the transfer of the specified agencies, programs, and functions to other specified departments, commissions, or offices. Section 20.06(2), F.S., defines a type two transfer as:

...the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing

agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

An agency that is transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred.

Disposition of Dead Bodies or Human Remains

Part III of ch. 406, F.S., pertains to the disposition of dead bodies and human remains. Section 406.50, F.S., governs the procedures for the disposition of unclaimed dead bodies or human remains. These procedures apply to all public officers, agents, or employees of every county or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons coming into possession, charge, or control of any dead human body or remains.

Section 406.53, F.S., sets forth procedures for the disposition of the body or remains of a person who was indigent. Chapter 406, F.S., does not define the term “indigent.” The Office of the Attorney General defined the term “indigent” in the context of this provision as meaning a person who does not have sufficient property or assets to provide for a burial.³

III. Effect of Proposed Changes:

Sections 1 through 13 of the bill have an effective date of January 1, 2005. All other provisions of the bill are, unless otherwise provided, take effect on July 1, 2004.

Section 1. Department of Financial Services. The bill amends s. 20.121, F.S., to create the Division Funeral, Cemetery and Consumer Services and the Board of Funeral, Cemetery and Consumer Services within the Department of Financial Services (DFS).

Section 2. Department of Business and Professional Regulation. The bill amends s. 20.165, F.S., to delete the reference to the Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation (DBPR); thereby, abolishing that board.

Section 3. Funeral Directors and Embalmers; Instruction on HIV and AIDS. The bill amends s. 455.226, F.S., which establishes a continuing education requirement for human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), to substitute the Board of Funeral, Cemetery and Consumer Services for the Board of Funeral Directors and Embalmers.

Sections 4 and 5. Definitions. The bill amends ss. 470.002 and 497.005, F.S., to amend the definitions for the terms “board,” “department,” “director,” and “division” as the terms will be

³ See Florida Attorney General Opinion. 91-33, interpreting the term “indigent” in s. 245.08, F.S. (1991) (since renumbered as s. 406.53, F.S.).

used upon the creation of the Division and Board of Funeral, Cemetery and Consumer Services on January 1, 2005. The term “board” would be redefined as the Board of Funeral, Cemetery, and Consumer Services. The term “division” would be defined as the Division of Funeral, Cemetery, and Consumer Services within the DFS. The term “director” would be defined as the director of the Board of Funeral, Cemetery, and Consumer Services.

Section 6. Department; Powers and Duties. The bill amends s. 497.105, F.S., which under current law authorizes the DFS to appoint the executive director of the Board of Funeral and Cemetery Services, to delete the reference to that board.

Section 7. Board of Funeral Directors and Embalmers. The bill repeals s. 470.003, F.S., which establishes the Board of Funeral Directors and Embalmers, s. 497.107, F.S., which establishes the headquarters of the Board of Funeral and Cemetery Services, and s. 497.109, F.S., which provides membership and meeting requirements for the Board of Funeral and Cemetery Services.

Section 8. Board of Funeral, Cemetery, and Consumer Services. The bill substantially amends s. 497.101, F.S., to create the Board of Funeral, Cemetery and Consumer Services (new board), and to establish the composition, powers, and duties for the new board. The new board would be composed of 10 members. The bill defines the composition of the new board as follows:

- Two members must be licensed funeral directors, who are associated with a funeral establishment.
- One member must be a licensed funeral director, who is associated with a licensed funeral establishment, and own or operate an approved cinerator facility.
- Two members must be persons whose primary occupation is associated with a licensed cemetery company.
- Three members must be consumers who are residents of the state, who have never been licensed as funeral directors or embalmers, and who are not connected with a cemetery or cemetery company licensed pursuant to ch. 497, the death care industry, the practice of embalming, funeral directing, or direct disposition.
 - One consumer member must be at least 60 years of age or older.
 - One consumer member must be licensed as a certified public accountant pursuant to ch. 473, F.S.
- One member must be a monument dealer with a certificate of authority issued pursuant to ch. 497, F.S.
- One member must be the State Health Officer or his or her designee.

The bill establishes four-year terms for the members of the new board, who are appointed by the governor from nominations made by the Chief Financial Officer (CFO). The bill provides for the compensation of members of the new board. It sets a minimum meeting requirement of at least once every six months. It provides an exemption from civil liability for any current or former board member acting in good faith in their official capacity. The bill provides that the governor may suspend or remove a member of the board for the stated grounds.

Section 9. Authority of the Board. The bill creates s. 497.102, F.S., to provide that the new board shall enforce the provisions of chs. 470 and 497, F.S. The bill also gives the new board the authority to enforce the provisions of ch. 455, F.S., which are necessary to enforce the provisions of ch. 470, F.S.

The bill bars the DFS from adopting any rule, publishing any notice of proposed rule development that affect chs. 455, 470, and 497, F.S., without first presenting the proposed rule or rules to the new board for its review and recommendation. This provision does not apply to emergency rules.

Section 10. Division of Funeral, Cemetery, and Consumer Services. The bill creates s. 497.1021, F.S., to create the Division of Funeral, Cemetery, and Consumer Services (“the new division”) within the DFS. The new division would be responsible for the new board’s recordkeeping, examinations services, legal services, investigative services, and those services in ch. 455, F.S., that are necessary to perform the duties of ch. 470, F.S.

The bill provides that funds received from settlements with regulated entities and persons may be utilized by the division for contracting for the training of auditors and the conduct of examinations in order to enhance oversight and enforcement of laws and regulations governing the activities of licensees.

Section 11. Director of the Division of Funeral, Cemetery, and Consumer Services. The bill creates s. 497.1022, F.S., to establish the office of the Director of the Division of Funeral, Cemetery and Consumer Services (the director). The director is appointed by, and serves at the pleasure of, the CFO. The director serves as the executive director of the new board. The director is responsible for preparation of the new board’s agenda, presentation of division staff recommendations, reports of the activities of the division to the new board, and such other duties as may be assigned by the CFO.

Section 12. This section provides that all duties performed by the Secretary of the Department of Business and Professional Regulation under ch. 470, F.S., and all duties performed by the Comptroller under ch. 497, F.S., shall be performed by the CFO.

Section 13. This section transfers, by a type two transfer, as the term is defined in s. 20.06, F.S., the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services to the new board.

The bill provides that transfer of authority to the new board would not affect the validity of any judicial or administrative action pending on December 31, 2004, or the validity of any license in effect on midnight, December 31, 2004, and provides that all licenses in effect at that time will remain in effect. It provides that the rules in effect on Midnight, December 31, 2004, shall become the rules of the DFS.

Section 14. This section expressly abolishes the Board of Funeral, Cemetery Services and the Board of Funeral Directors and Embalmers effective midnight December 31, 2004.

Section 15. This section provides that, effective January 1, 2005, all fees collected under chs. 470 and 497, F.S., shall be deposited in the Regulatory Trust Fund for the Department of Financial Services.

Section 16. This section recognizes the need to conform the Florida Statutes to the provisions of this bill, and to direct the Division of Statutory Revision to provide the relevant Legislative committees the assistance, upon request, needed to enable such committees to draft conforming legislation.

Section 17. Definitions. The bill amends s. 470.002, F.S., to provide definitions for the terms “body parts,” “closed container,” “cremated remains,” “cremation,” “cremation chamber,” “cremation container,” “cremation interment container,” “niche,” “processing,” “pulverization,” “temporary container,” and “urn.” The bill clarifies the term “casket” to provide that a casket is constructed of materials that may or may not be combustible. It redefines the term “cremation.” It adds cremation interment containers to the definition of “funeral merchandise.” According to industry representatives, these definitions in the bill are consistent with the LPC03 recommendations.

The term “cremation,” as amended by this bill in s. 470.002(10), F.S., differs from the definition of the same term in s. 497.005, F.S.

The bill clarifies the definition of the term “legally authorized person,” which under current law excludes a spouse arrested for an act of domestic violence, to exclude the spouse if the act of domestic violence resulted in, or contributed to, the death of the deceased. The bill further amends the definition of “legally authorized person” to provide that:

[W]here there is a person in any priority class listed in this subsection, the funeral establishment shall rely upon the authorization of any one legally authorized person of that class if that individual represents that he or she is not aware of any objection of the cremation of the deceased’s human remains by others in the same class of the person making the representation or of any person in a higher priority class.

This provision requires the funeral establishment to rely on the representation of any member of the listed priority classes. The funeral establishment is not authorized to consult with other members of the listed priority classes to confirm the representation.

Section 18. Establishment of embalmer apprentice. The bill amends s. 470.0085, F.S., to increase from one to three years the period that an embalmer apprentice may serve in an apprentice capacity. It increases from three to five years the period that an embalmer apprentice may serve in an apprentice capacity while enrolled in and attending a course in mortuary science or funeral service education at any mortuary or funeral service education college or school.

Section 19. Renewal of registration of direct disposer. The bill amends s. 470.018, F.S., to increase from three to six the maximum number of classroom hours of continuing education needed for renewal of a direct disposer registration that the department must prescribe by rule.

Section 20. Direct disposal establishment. The bill amends s. 470.021, relating to the practice of direct disposal, which is the practice of cremating human remains without embalming. The bill requires that the practice of direct disposal must be performed in a fixed location of at least 625 interior contiguous square feet. The location must also maintain or make arrangements of suitable capacity for the refrigeration and storage of dead human bodies that are handled and stored in the establishment. It establishes requirements for the maintenance and annual inspection of each cinerator used for the cremation of dead human bodies.

Section 21. Funeral establishment; licensure. The bill amends s. 470.024, F.S., to require that a funeral establishment maintain a preparation room equipped with necessary ventilation, drainage, and instruments for embalming dead human bodies. Alternatively, the bill requires that the funeral establishment make arrangements for a preparation room as established by board rule.

Section 22. Cinerator facility; licensure. The bill amends s. 470.025, F.S., to provide that an operator of a cinerator facility “shall be entitled to rely on the permission of a legally authorized person to cremate more than one human body” at one time. The bill also provides that cremation may include the processing and pulverization of bone fragments. The bill requires the operator of a cinerator facility to establish written procedures for the removal of human remains and bone fragments resulting from cremation. If the operator of the facility follows these procedures, the operator would not be liable for the unintentional or incidental commingling of human remains and bone fragments. A copy of the procedures must be available, upon request, to the department and legally authorized persons.

Section 23. Cremation procedure required. The bill creates subsection (3) of s. 470.0255, F.S., to permit the cremation of parts of human remains. The bill provides that this subsection does not authorize the cremation of body parts as defined in s. 470.002, F.S., which, as amended by section 17 of this bill, defines body parts to mean limbs or other parts of the human anatomy removed from a person or human remains for medical purposes during treatment, surgery, biopsy, or medical research, or that have been donated for medical research.

Section 24. Preneed sales. The bill amends s. 470.028, F.S., to provide that a funeral home director in charge of a funeral home establishment must be responsible for the control and activities of the establishment’s preneed agents. The person in charge of a direct disposal establishment must be responsible for the control and activities of the establishment’s preneed agents.

Section 25. Reports of cases embalmed and bodies handled. The bill amends s. 470.029, F.S., to change from the 10th to the 20th day of each month the date that each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility must report to the department the name of each deceased, and other information as may be required, embalmed or otherwise handled by the establishment or facility.

Section 26. Prohibitions; penalties. The bill amends s. 470.031, F.S., to prohibit the guarantee of the price of goods and services at a future date, except as provided in ch. 497, F.S. Prices may be guaranteed in preneed contracts made under ch. 497, F.S.

Section 27. Identification of human remains. The bill amends s. 470.0355, F.S., to require the proper identification of dead human remains in the casket, alternative container, or cremation container. Effective October 1, 2004, a licensed funeral establishment in charge of funeral arrangements in an unlicensed cemetery would be responsible for the identification of dead human remains. The bill sets forth requirements for the identification of dead human remains in unlicensed and licensed cemeteries. A tag or permanent identifying mark containing the name of the decedent and the date of death, if available, must be placed on the burial container, cremation interment container, or other container or on the inside of the crypt or niche. The board is authorized make rules specifying the materials and locations of the identifying tag or marker.

The bill requires direct disposal establishments to establish a system for the identification of dead human remains received, and for tracking the human remains from the time received until the time of delivery to authorized persons. A copy of the identification procedures must be made available, upon request, to the department and legally authorized persons.

Section 28. Disciplinary proceedings. The bill reenacts s. 470.036(1)(a), F.S., relating to discipline for violations of s. 455.227(1), F.S., or s. 470.031, F.S., for the purpose of incorporating the amendment into s. 470.031, F.S.

Section 29. Definitions. The bill amends s. 497.005, F.S., to create subsections defining the terms “niche” and “urn.” The bill clarifies the term “casket” to provide that a casket may be constructed of materials that may or may not be combustible. The bill clarifies the definition of the term “ossuary,” which is currently defined as a receptacle used for the communal placement of cremated human remains without benefit of urn or other container, to provide that the human remains will be commingled with other cremated human remains and are unrecoverable.

The bill clarifies the definition of the term “scattering garden,” which is defined under current law as a location set aside within a cemetery for the spreading or broadcasting of cremated human remains. The bill provides that in a scattering garden the human remains:

...have been removed from their container and can be mixed with or placed on top of the soil or ground cover or buried in an underground receptacle on a communal basis and that are unrecoverable.

Section 30. Cemetery companies; authorized functions. The bill amends s. 497.305, F.S., which authorizes cemetery companies to adopt bylaws establishing minimum standards for burial merchandise or the installation thereof, to require cemetery companies to include minimum standards for access to install burial merchandise. The bill requires that a cemetery company must comply with its adopted bylaws, unless it is not physically possible. The family of next of kin may waive the 12 inch minimum.

Section 30. Standards for grave spaces. The bill creates s. 497.306, F.S., to provide standards for adult grave spaces. The bill provides that the standard adult grave space shall measure at least 42 inches in width and 96 inches in length. This standard does not apply to preinstalled vaults in designated areas. Except for cremated remains, the bill requires no less than 12 inches of soil on top of the outer burial container.

The bill requires that effective October 1, 2004, a licensed cemetery must prepare a map documenting establishment of recoverable internal survey reference markers. The map must show:

- The number of grave spaces available for sale.
- The location of each grave space.
- The number designation assigned each grave space.
- The dimensions of a standard adult grave space.

Adult grave spaces established before October 1, 2004, are not required to meet the standard for dimensions or separation set forth in this section. This section only applies to adult grave spaces. It does not provide standards for grave spaces for children.

Section 32. Identification of human remains in licensed cemeteries. The bill creates s. 497.307, F.S., to provide identification requirements for human remains interred, entombed, scattered, or otherwise placed for final rest at licensed cemeteries on or after October 1, 2004. The bill requires a tag or a permanent identifying marker containing the name of the decedent and the date of death, if available, on the outer burial container, cremation container, or other container, or on the inside of the crypt or niche.

The bill provides that a licensed cemetery company may rely entirely on the identity stated on the burial transmit permit or on the identification supplied by a person licensed under ch. 470, F.S. The bill further provides that a cemetery company is not liable for any differences shown on the burial transmit permit or other identification and the actual identity of the dead human remains delivered to and buried in the cemetery.

Section 33. Illegal tying arrangements. The bill amends s. 497.325, F.S., to authorize companies that own and operate a cemetery company to establish reasonable rules for style and size of a monument or its foundation sold or serviced by noncemetery licensed persons. Current law only authorizes cemetery companies to make such rules. The bill also includes companies that own and operate a cemetery as being subject to the prohibitions and requirements in this section relating to the installation, care and maintenance of monuments.

Section 34. Disclosure of information to the public. The bill amends s. 497.333, F.S., to require a licensee under this chapter to provide to each customer a complete description of any monument, marker, or memorialization to be placed at a grave site.

Section 35. Registration of monument establishments. The bill amends s. 497.361, F.S., to provide that monument establishments must have a valid certificate of authority with the DFS. Sections 36 through 41 of this bill set forth the requirements for a monument establishment certificate of authority. Section 497.361, F.S., provides for a \$200 registration fee for a monument establishment. The bill does not affect this fee.

The bill also requires that monuments not delivered within a specified timeframe shall be considered a breach of contract, unless the monument establishment has a written contract to extend the delivery date. Under current law, monuments must be delivered within 120 days of the date of sale, but the monument establishment may request two 30-day extensions.

The bill provides that all contracts with the public must be approved by the DFS and must include a complete description of any monument, marker or related product. The bill further provides that no registration to operate as a monument establishment may be transferable or assignable.

Section 36. Regulation of monument establishments. The bill creates s. 497.365, F.S., to provide for an inspection program by the DFS for all monument establishments in accordance with the requirements of this act. The bill requires the DFS to adopt rules to regulate the approval of contracts for memorials and related products. The bill also requires written complaint procedures, mandatory responses to consumer's complaints, disclosure to the public of ownership, the fingerprinting of owners, and appropriate record keeping.

Section 37. Monument establishment business location. The bill creates s. 497.371, F.S., to require that a monument establishment business must have a specific street address or location consisting of office and display areas. The establishment must comply with local government zoning regulations and may not be located on tax-exempt property. The monument establishment's facility must be open to the public during regular business hours, with facilities to design, inscribe, and install monuments and related products. This section establishes a licensure requirement for the installation of monuments, markers, and related products.

Section 38. Licensure of monument establishments to sell preneed. The bill creates s. 497.379, F.S., to provide that a monument establishment cannot sell a preneed contract without having a valid certificate of authority from the DFS. A person must have at least three years of experience in the management of an establishment selling monuments, markers, and related products to qualify for the certificate of authority.

Section 39. Monument establishment sales representative. The bill creates s. 497.385, F.S., to require that all persons selling monuments, markers, or related products must register with the board, including persons licensed under chs. 470 and 497, F.S. The bill requires any person selling monuments, markers, or related products for a licensed monument establishment must register as a preneed agent pursuant to the requirements of ch. 497, F.S. Section 497.439, F.S., provides for the registration of preneed sales agents.

Section 40. Monument establishment preneed contracts. The bill creates s. 497.391, F.S., to require, effective January 1, 2005, board approval of any preneed contract written by a monument dealer or establishment.

Section 41. Licensed monument establishment financial requirements. The bill creates s. 497.395, F.S., to establish financial requirements for a monument establishment's certificate of authority to make preneed sales. Licensed monument establishments must maintain a minimum net worth of \$10,000. The bill requires monument establishments to submit a recent year-end financial statement with their application for licensure, which must be prepared in accordance with generally accepted accounting principles (GAAP). The bill establishes annual fees for renewal of monument establishment certificates of authority. The renewal fees are based on the establishment's sales volume and range from \$500 to \$1,250, depending on the total sales of the

establishment. Under current law, monument establishments must register with a fee of \$200, and are required to renew their registration every two years with a renewal fee of \$150.

The bill provides that applicants for a monument establishment certificate of authority that do not meet the financial requirements set forth in the bill, may submit additional evidence or agree to additional oversight as a condition to receiving or retaining a certificate of authority. The bill provides examples of acceptable additional evidence. The bill also establishes oversight requirements.

Section 42. Certificate of authority required. The bill amends s. 497.405, F.S., to expand the activities by a cemetery that cannot be performed without a certificate of authority. Under the bill, a cemetery must be licensed by the board before it can advertise to sell or make arrangement for services, merchandise, or burial rights on a preneed basis. The bill expands the list of merchandise and services that can be sold by religious-institution-owned cemeteries to their members and their families to include cremation internment containers.

Section 43. Cancellation of, or default on, preneed contracts. The bill amends s. 497.419(4), F.S., to exempt from the 30-day refund requirement for cancelled preneed contracts any amounts allocable to any burial rights, merchandise, or service that has been used by the purchaser.

The bill creates s. 497.419(11), F.S., to provide that failure to install a monument within 180 days of interment shall be considered a breach of contract by the preneed certificateholder, unless the preneed certificateholder has a written agreement to extend the installation date. The purchaser is entitled to a full refund within 30 days of the purchaser's written request for a refund after the breach of contract by the preneed certificateholder.

Section 44. Inactive or revoked certificateholders. The bill amends s. 497.436, F.S., relating to the notice that is required to be filed with the board before surrendering a certificate of authority. The bill clarifies that the notice provision is intended to protect the contract purchaser. The bill makes permissive the requirement under current law that the board must review the certificateholder's trust funds, trust agreements, and evidence of all outstanding preneed contracts. The bill authorizes the board to perform other procedures it deems necessary upon the surrender of a certificate of authority.

Section 45. Unclaimed dead bodies or human remains. The bill amends s. 406.50, F.S., to provide that multiple claims for a body shall be prioritized in accordance with s. 732.103, F.S., which establishes inheritance rules. It provides that an "unclaimed" body is one that is not claimed by a legally authorized person, as defined in s. 470.002, F.S., for interment at that person's expense

Section 46. Death of indigents. The bill amends s. 406.53, F.S., to provide that indigent relatives may claim a body in a manner consistent with the policy of the agency in possession or control of the body. It defines the term "indigent" to mean income at or below 100 percent of the recognized federal poverty guidelines produced by the United States Department of Health and

Human Services (HHS). The current HHS federal poverty guideline for the 48 contiguous states is \$9,310 for one person.⁴

Section 47. The provisions of this bill, except as otherwise provided shall take effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Monument establishments that make preneed sales would have to pay the annual renewal fees for a certificate of authority, which fees range from \$500 to \$1,250, depending on the total sales of the establishment. According to the DFS, licensing fees may be increased to meet the anticipated operational needs for this self-funded program.

B. Private Sector Impact:

Monument establishment would also be required to maintain a minimum net worth of \$10,000 in order to make preneed sales. According to the DFS, the surveying requirements of the bill may require cost in the amount of approximately \$15,000 per acre for a survey of cemetery gardens, and, regarding the identification requirements, costs of approximately \$6,500 for identification tags.

C. Government Sector Impact:

According to the DBPR, one FTE and \$38,439 could be deleted by this bill because department staff does not devote all of their time solely to the funeral profession, and the staff workload varies due to the unpredictable nature of complaints. The direct costs related to the board office are \$5,250 in Other Personal Services and \$14,956 in expenses. In addition, the following categories could be reduced: Unlicensed Activities (\$5,000), Service Operations (\$100,000), and Attorney General Contract (\$31,000). In the Service Operation Program, which supports the board through the Customer Contact Center, Central Intake, and Testing & Continuing Education service entities, one FTE and \$36,573 could be reduced in Central Intake under this proposed legislation. In the

⁴ See *Annual Update of the HHS Poverty Guidelines*, Federal Register, vol. 69, no. 30, pages 7335-7338, February 13, 2004.

Information Technology Service Entity, the department anticipates a decrease of \$24,855. Regarding non-operating expenditures, the department states:

The Service Charge to General Revenue expenditure is dependent on the amount of revenue collected each year. Due to the biannual renewals for this profession, the amount will vary each year. During a two year cycle the amount will average \$57,000 per year. Transfer to the Administrative Trust Fund varies each year according to the workload allocation methodology.

According to the DFS, it will need five positions for the new division, and five more positions for the regulation of monument establishments. According to the DFS, it would need an additional seven positions to conduct field inspections and investigate complaints. The DFS advises that it may need additional positions to provide licensing services which are currently outsourced by the DBPR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 528Amendment No. 

623182

CHAMBER ACTION

SenateHouse

1

BANKING AND INSURANCE**DATE:** 4/15/04**TIME:** 1:45 p.m.

Senator Dockery moved the following amendment:

Senate Amendment

On page 5, line 30, page 6, line 14, page 7, line 19,
page 8, lines 5,13, and 25, page 9, line 3, page 12, lines 7
and 28, page 13, line 17,delete "January 1, 2005"

and insert: October 1, 2005

Bill No. CS for SB 528

Amendment No. _____



524510

2

CHAMBER ACTION

SenateHouse.
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BANKING AND INSURANCE

DATE: 4/15/04TIME: 1:45 p.m.

Senator Dockery moved the following amendment:

Senate Amendment

On page 9, line 1, page 12, line 16, page 14, line 1,
page 16, lines 3 and 7, and page 45, line 4, delete "January
1, 2005"

and insert: October 1, 2005

Bill No. CS for SB 528Amendment No. 

122122

3

Senate

CHAMBER ACTION

House

BANKING AND INSURANCE

DATE: 4/15/04TIME: 1:45 p.m.

Senator Dockery moved the following amendment:

Senate Amendment

On page 14, lines 23 and 29, page 15, lines 3, 4, 21, 27
and 31, and page 16, line 4, delete "December 31, 2004"
and insert: September 30, 2005

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 3012

SPONSOR: Senator Campbell

SUBJECT: Judgment Liens

DATE: April 19, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Lang	JU	Favorable
2.	Knudson <i>JK</i>	Deffenbaugh <i>BP</i>	BI	
3.			CJ	
4.			AGG	
5.			AP	
6.				

I. Summary:

Senate Bill 3012 makes clarifying and technical changes to provisions in Florida law relating to judgment liens. The bill amends various sections of statute to:

- clarify provisions relating to the responsibilities of a clerk of court regarding the satisfaction of a judgment lien;
- clarify provisions relating to the timing for filing a judgment lien certificate;
- clarify provisions regarding instructions to the sheriff and recordkeeping by the Department of State;
- remove an unnecessary sentence which has been misread to require the filing of a judgment lien certificate as a condition precedent to seeking garnishment;
- make clarifying changes to the "Uniform Out-of-Country Foreign Money Judgment Recognition Act";
- make clarifying changes to provisions relating to the execution of liens and execution sales to recognize the possibility of multiple judgment lien creditors and give control over the mailing of notices to the sheriff;
- recognize that the provisions of s. 55.27, F.S., apply to liens on real property, as well as liens on personal property;
- remove the unnecessary requirement of delivery of a writ of execution prior to initiating proceedings supplementary to execution when the judgment debtor has no property available for a judgment lien;
- provide that a homestead property owner may use the notice of homestead provisions for liens based on foreign judgments; and
- provide a clarifying reference within the definition of "lien creditor" in the Uniform Commercial Code provisions of Florida law relating to secured transactions.

This bill substantially amends the following sections of the Florida Statutes: 55.141, 55.202, 55.204, 55.205, 55.602, 55.603, 55.604, 55.605, 55.606, 56.21, 56.27, 56.29, 222.01, 319.27, and 679.1021.

II. Present Situation:

Background

In 2000, the Legislature adopted a major revision of Florida's judgment lien laws.¹ This revision became effective on October 1, 2001. Prior to the revision, judgment creditors were required to file a lien in each separate county where a judgment debtor may own property. Florida was one of 11 states that still followed the lien-on-delivery rule which provides that a true lien is not actually created on personal property until the property is levied and sold by the sheriff. The revision established a statutory framework for perfecting and prioritizing judgment liens on personal property.² With the revision in place, judgment creditors need only to file a single judgment lien certificate with the Department of State. Since the implementation of this major revision, the need for some clarification to the law has been identified.³

Judgment Liens

A judgment lien refers to a lien against property that is based on an underlying money judgment. When a party prevails in a law suit and is awarded monetary damages, the losing party is referred to as the "judgment debtor" and the winning party is referred to as the "judgment creditor" or "judgment holder." If the judgment debtor fails to pay the judgment creditor all or part of the judgment, the judgment creditor may seek to attach and execute a lien against property owned by the judgment debtor. A judgment lien may be acquired on a judgment debtor's interest in all personal property in the state other than fixtures, money, negotiable instruments, and mortgages, by filing a judgment lien certificate with the Department of State.⁴

A valid judgment lien confers on the judgment holder the right to proceed against the property of the judgment debtor through writ of execution, garnishment, or other judicial process.⁵ A writ of execution authorizes the enforcement of a money judgment. The writ must be obtained from the clerk of the court. The judgment creditor must deliver the writ to the sheriff. The writ of execution directs the sheriff to levy on the property owned by the judgment debtor located in the county. Upon levy, the sheriff seizes the property and sells it. The proceeds of the sale are distributed to cover the costs of the sale, to pay the judgment creditor and any other judgment

¹ Chapter 2000-258, L.O.F.

² Sections 55.201 – 55.209, F.S.

³ See Jeffrey Davis, *Fixing Florida's Execution Lien Law Part Two: Florida's New Judgment Lien on Personal Property*, 54 Fla. L. Rev. 119 (2002). Prof. Davis first wrote about the need to modernize Florida judgment lien law in 1996 which was a strong motivating factor for the revisions in 2000. See Jeffrey Davis, *Fixing Florida Execution Lien Law*, 48 Fla. L. Rev. 657 (1996).

⁴ Section 55.202(2), F.S.

⁵ Section 55.205(1), F.S. A judgment holder who has not acquired a judgment lien through the filing of a judgment lien certificate with the Department of State may nevertheless acquire a lien by writ of execution. Such lien is acquired at the time of levy against the property of the judgment debtor and is taken subject to the claims and priority of other judgment holders.

creditors, with the remainder, if any, going to the judgment debtor.⁶ The levy is the process by which the property is seized for sale to satisfy the writ of execution based on the underlying judgment. A sheriff may take actual or constructive custody of personal property. The sheriff must take enough property to satisfy the judgment although he or she may accept payment in full on the writ in lieu of making a levy.⁷

Satisfaction of Judgments

Section 55.141, F.S., authorizes a judgment debtor to satisfy the judgment against him or her before a judgment holder attempts to collect the judgment by paying the full amount of the judgment, with interest, plus the cost of issuing a satisfaction of judgment into the registry of the court that issued the judgment. Upon the payment, the clerk, or the judge if there is no clerk, must “record a satisfaction of judgment, *provided by the judgment holder*, upon the payment of the recording charge . . . plus the necessary costs of mailing to the clerk or judge.”⁸ The clerk or judge then must notify the judgment holder, if such person and his or her address are known to the clerk or judge, and pay the funds to the judgment holder upon request, less fees for receiving into and paying out of the registry of the court.⁹

Section 55.141, F.S., “was enacted primarily for the benefit of judgment debtors, and not judgment creditors.”¹⁰ The benefits to a judgment holder of making a payment to the registry of a court were described as follows in *Gerardi v. Carlisle*, 232 So. 2d 36, 39 (Fla. 1st DCA 1969):

By making such a deposit he precludes a levy from being made against his property, arrests the further accrual of interest on the judgment, and at the same time releases any property he may own from the lien of the judgment. The statute furthermore permits the judgment debtor to discharge his obligation by availing himself of the provisions of the statute under circumstances where the judgment creditor is unknown, cannot be reached, or his place of residence cannot be ascertained.

According to the Real Property, Probate, and Trust Law Section of the Florida Bar (RPPTL), a clerk of court in southwest Florida has declined to record a satisfaction of judgment because the judgment holder could not be located or because the judgment holder failed to deliver a satisfaction of judgment form to the clerk.¹¹ As a result, the purpose of the statute to allow an expedited procedure to clear judgment liens when the judgment holder cannot be located or refuses to timely deliver a satisfaction is defeated, according to RPPTL.¹² The ability to clear judgment liens quickly is important to real estate practitioners who seek to close on a real estate transaction.¹³

⁶ Chapter 30, F.S., contains provisions relating to sheriffs and their responsibilities regarding writs, execution, and other related processes.

⁷ See ch. 56, F.S., for provisions regarding writs of executions and execution sales.

⁸ Section 55.141(2), F.S. Emphasis added.

⁹ *Id.*

¹⁰ *Gerardi v. Carlisle*, 232 So. 2d 36, 39 (Fla. 1st DCA 1969).

¹¹ The Florida Bar, Real Property, Probate, and Trust Law Section, *White Paper on F.S. 55.141 SATISFACTION OF JUDGMENTS AND DECREES*.

¹² *Id.*

¹³ *Id.*

III. Effect of Proposed Changes:

The provisions of the bill make clarifying and technical changes to provisions in Florida law relating to judgment liens.

Satisfaction of Judgments

Section 1. Amends s. 55.141, F.S. The bill clarifies that a judgment holder does not have to supply a satisfaction of judgment form to a clerk of court in order for a clerk of court to record a satisfaction of judgment under s. 55.141, F.S. Upon the payment of the full amount of the judgment, with interest, and other required fees into the registry of the court, a clerk must record a satisfaction of judgment.

The bill also deletes a requirement for a judge to record the satisfaction of judgment if there is no clerk. The inherent equitable powers of a court may enable it to issue a satisfaction of judgment when there is no clerk.¹⁴ As such, express statutory authority for a judge to issue a satisfaction of judgment may be redundant.

Additionally, the bill creates a satisfaction of judgment form for use by a clerk of court to record judgments satisfied by judgment debtors under s. 55.141, F.S.

Judgment Liens

Section 2. Amends s. 55.202, F.S. The bill clarifies that a judgment has become final enabling a judgment holder to file a lien certificate with the Department of State when the time to move for a rehearing has expired and no motion for a rehearing is pending. However, a judge, for cause shown, may authorize a judgment holder to file a lien certificate before the judgment becomes final. According to Professor Davis, a judge may wish to authorize a judgment holder to file a lien certificate before a judgment becomes final if there has been a showing that the judgment debtor may seek to remove to an out-of-state location personal property to which a lien certificate will apply.

Section 3. Amends s. 55.204, F.S. The bill clarifies the effect of a judgment lien after it lapses. A judgment lien regarding itemized property continues for an additional 90 days after the lien lapses if certain circumstances are met. Accordingly, the bill provides that a judgment lien continues for 90 days after it lapses if the instructions to levy are clear enough “to permit a sheriff to act” by placing a levy on the judgment debtor’s property and the instructions for the levy are delivered before the lapse of a judgment lien.

The bill clarifies the documents that must be maintained and the length of time those documents must be maintained by the Department of State (department) when a second judgment lien is filed by the judgment holder on the property of the judgment debtor. Under the bill, the department must maintain documents related to both the first and second liens for at least 1 year after the second judgment lien expires.

¹⁴ See *Ford Motor Credit Co. v. Simmons*, 421 So. 2d 698, 700 (Fla. 2nd DCA 1982) (Stating that “[e]very court of law possesses inherent equitable power sufficient to control its own judgments, and this includes power to set aside a satisfaction of one of its own judgments”).

Section 4. Amends s. 55.205, F.S. The bill deletes redundant language in s. 55.205(1), F.S., which authorizes a judgment holder to proceed against the property of a judgment debtor through judicial process. The bill also clarifies that a judgment holder that does not file a judgment lien may proceed against the judgment debtors' property through judicial process.

Sections 5-9. Amends ss. 55.602 – 55.606, F.S., to provide a method for the enforcement of specified judgments issued by courts of foreign countries. Throughout these provisions a judgment from a court of a foreign country is referred to as a foreign judgment from a “foreign state.” To prevent confusion between a state of the United States and a “foreign state,” the bill clarifies that a foreign state means an “out-of-country foreign state.” The bill also corrects an error in s. 55.604, F.S., by deleting the last sentence of s. 55.604(7), F.S. That sentence referred to a person designated pursuant to “paragraph (1).” No person, however is designated in subsection (1) of s. 55.604, F.S.

Section 10. Amends s. 56.21, F.S., to clarify the process by which notice of a levy and execution sale is to be made.

Section 11. Section 56.27, F.S., is amended by the bill to clarify that lien holders with the highest priority liens get paid before lien holders of lower priority are paid from the proceeds from the levy on the property of a judgment debtor.

Section 12. Section 56.29, F.S., is amended by the bill to provide that a person or entity that has an unsatisfied judgment instead of an unsatisfied execution is entitled to supplemental proceedings to attempt to collect the unsatisfied judgment.

Sections 13-14. The sections make technical changes to correct statutory references.

Section 15. The bill also amends s. 679.1021(1)(zz), F.S., to provide that the term “lien creditor” includes a creditor that has acquired a judgment lien certificate.

The bill takes effect upon becoming a law except as provided therein.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill clarifies those procedures that a judgment debtor may follow to quickly obtain a satisfaction of judgment issued by a clerk of court. Additionally, judgment holders may be able to collect judgments more efficiently when attempting to collect a judgment from the proceeds of a judgment debtor's property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2688

SPONSOR: Senator Campbell

SUBJECT: Guardianship

DATE: April 16, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Lang	JU	Fav/1 amendment
2.	Collins	Whiddon	CF	Favorable
3.	Johnson	Deffenbaugh <i>BP</i>	BI	
4.			AAV	
5.			AP	
6.				

I. Summary:

Senate Bill 2688 authorizes a guardian of the property of an incapacitated grantor to contest the validity of a trust as an exception to the general rule that an action to contest the validity of a trust may not be commenced until the trust becomes irrevocable.

The bill also permits a court to find that a person is incapacitated without requiring the appointment of a guardian. A court must not appoint a guardian if there is an alternative, such as a trust or durable power of attorney, that will sufficiently address the problems of the incapacitated person. A trust, trust amendment, or durable power of attorney is not an alternative to the appointment of a guardian if an interested person files a verified statement that provides a factual basis for the belief that an instrument is invalid. Nevertheless, the bill provides that a court may appoint a guardian and allow the authority granted by a durable power of attorney to remain exercisable by an attorney in fact.

If a court denies the request of a guardian to contest the validity of a trust created by and for the benefit of a ward, the court must consider whether the guardian is needed to exercise the delegable rights of the ward. If a judicial proceeding determines that the ward's durable power of attorney, trust, or trust amendment is valid, or a petition is filed alleging that an alternative to guardianship exists, a court must consider whether a guardian is needed to exercise the delegable rights of the ward.

This bill substantially amends the following sections of the Florida Statutes: 737.2065, 744.311, and 744.441.

The bill creates section 744.462 of the Florida Statutes.

II. Present Situation:

Trusts

A “trust” is defined as:

a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. The term . . . “beneficiary of a trust” signif[ies] one who has an equitable interest in property subject to a trust and who enjoys the benefit of the administration of the trust by a trustee. The trustee is the person who holds the legal title to the property held in trust, for the benefit of the beneficiary. The settlor, or trustor, is the person who creates the trust.¹

A “grantor” is one who creates or adds to a trust and includes a settlor or trustor and a testator who creates or adds to a trust.²

Purposes of a Revocable Trust

A “revocable trust” is: “A trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income.”³ This type of instrument is commonly used as a will substitute. Unlike a will, however, a revocable trust allows a settlor to use the trust property during his or her lifetime.⁴

Trust Contests

Under s. 737.2065, F.S., the validity of a trust may only be contested after the trust has become irrevocable. According to the Florida Bar Real Property, Probate, and Trust Law Section, there have been instances where a settlor and beneficiary of a trust did not have the capacity to revoke a revocable trust procured by fraud, duress, mistake, or undue influence. In some of these cases no person, including a guardian, was able to challenge the validity of the trust to protect the settlor beneficiary from financial harm.

Guardianship

The intent of the Florida Guardianship Law in ch. 744, F.S., is to provide the least restrictive means necessary to provide assistance to a person who is not fully capable of acting on his or her own behalf.⁵

A guardianship is a trust relationship of the most sacred character, in which one person, called a “guardian,” acts for another, called the “ward,” which the law regards as incapable of managing his own affairs.⁶

¹ 55 A Fla. Jur. 2d Trusts s. 1 (database updated January 2004).

² Section 731.201(17), F.S.

³ Black’s Law Dictionary (7th ed. 1999).

⁴ Wm. Fletcher Belcher, *Proposed Exception to Existing Prohibition Against Contesting Revocable Trusts*, Fla. Bar Journal, Vol. XXV, No. 2, 11 (Winter 2003).

⁵ Section 744.1012, F.S.

Determination of Incapacity

Any person may file, under oath, a petition for determination of incapacity alleging that a person is incapacitated. The petition must provide factual information that demonstrates that a person is incapacitated. The petition will also state the delegable rights that an alleged incapacitated person is incapable of exercising.⁷ These delegable rights include the right to marry, vote, personally apply for government benefits, have a driver's license, travel, seek and retain employment, contract, sue and defend lawsuits, manage property, determine his or her residence, and consent to medical treatment.⁸ If applicable, a petition for the appointment of a guardian must be filed with the petition to determine incapacity.⁹

After a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.¹⁰ If the examining committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.¹¹ If the examining committee determines that the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If after a hearing, the court determines that a person is incapacitated, the court must also find that alternatives to guardianship were considered and that no alternatives to guardianship will sufficiently address the problems of the incapacitated person and appoint a guardian.¹² The costs of a proceeding adjudicating a person as incapacitated will be paid by a guardian from the property of the ward.¹³ If a petition for determination of incapacity is dismissed, the costs of the proceedings may be assessed against the petitioner.¹⁴

Authority of a Guardian

An order appointing a guardian must specify the specific powers and duties of the guardian and the delegable rights which have been removed from the ward.¹⁵ The order must preserve an incapacitated person's right to make decisions to the extent that he or she is able to do so.¹⁶ A guardian is empowered with the authority to protect the assets of the ward and to use the ward's property to provide for his or her care.¹⁷ Some powers under s. 744.441, F.S., may only be exercised by a guardian with court approval, include the power to:

- (2) Execute, exercise, or release any powers as trustee, personal representative, custodian for minors, conservator, or donee of any power of appointment or other power that the ward might have lawfully exercised, consummated, or executed if not incapacitated, if the best interest of the ward requires such execution, exercise, or release.

⁶ 28 Fla. Jur. 2d Guardian and Ward s. 1 (database updated January 2004).

⁷ Section 744.3201(1) and (2), F.S.

⁸ Section 744.3215(2) and (3), F.S.

⁹ Section 744.3201(3), F.S.

¹⁰ Section 744.331(4), F.S.

¹¹ Section 744.331(4), F.S.

¹² Sections 744.311(6)(b) and (f), F.S.

¹³ Section 744.311(7)(b), F.S.

¹⁴ Section 744.311(7)(c), F.S.

¹⁵ Section 744.344(1), F.S.

¹⁶ Section 744.344(2), F.S.

¹⁷ Sections 744.361(4), and 744.444, F.S.

(11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties.

(19) Create revocable or irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning.

The foregoing statutory provisions appear to authorize a guardian to exercise a ward's rights under a revocable trust. This right may include the right to revoke the trust. Accordingly, a guardian was authorized by a court to exercise a ward's authority under a revocable trust to appoint a new trustee.¹⁸ In so holding, the court determined that a guardian with court approval has: "the power not only to execute the powers of the ward, but to exercise or release any powers the ward would have as trustee, personal, representative, custodian, conservator or done."¹⁹

In *Ullman v. Garcia*, 645 So. 2d 168 (Fla. 3d DCA 1994), however, the court would not allow a guardian to attack the validity of a revocable trust that was alleged to have been created through undue influence. The case did not involve an attempt by a guardian to revoke the revocable trust. The court stated in holding that the guardian could not attack the validity of the trust:

that the guardian of an incapacitated person cannot seek to rewrite the testamentary plan of a ward by contesting the validity of a revocable trust on the basis of undue influence. A finding to the contrary would defeat the evident purpose of the settlor/ward, and interfere with the settlor/ward's vested right to dispose of her property as she pleases.²⁰

III. Effect of Proposed Changes:

The bill authorizes a guardian of the property of an incapacitated grantor to contest the validity of a trust as an exception to the general rule that an action to contest the validity of a trust may not be commenced until the trust becomes irrevocable.

The bill also permits a court to find that a person is incapacitated without requiring the appointment of a guardian. A court must not appoint a guardian if there is an alternative, such as a trust or durable power of attorney, that will sufficiently address the problems of the incapacitated person. A trust, trust amendment, or durable power of attorney is not an alternative to the appointment of a guardian if an interested person files a verified statement that provides a factual basis for the belief that an instrument is invalid. Nevertheless, the bill provides that a court may appoint a guardian and allow the authority granted by a durable power of attorney to remain exercisable by an attorney in fact.

If a court denies the request of a guardian to contest the validity of a trust created by and for the benefit of a ward, the court must consider whether the guardian is needed to exercise the delegable rights of the ward. If a judicial proceeding determines that the ward's durable power of attorney, trust, or trust amendment is valid, or a petition is filed alleging that an alternative to

¹⁸ *In Re Guardianship of Mueller v. Boyle*, 650 So. 2d 698, 699 (Fla. 4th DCA 1995).

¹⁹ *Id.* at 699.

²⁰ *Ullman v. Garcia*, 645 So. 2d 168, 170 (Fla. 3d DCA 1994)

guardianship exists, a court must consider whether a guardian is needed to exercise the delegable rights of the ward.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes guardians to contest the validity of a ward's revocable trust.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not appear to foreclose the possibility that under s. 744.441(2), F.S., a guardian has the authority to revoke a revocable trust rather than attack the validity of the trust.²¹ The Legislature may wish to clearly provide that a trust may only be terminated by a guardian upon a judicial determination of invalidity.

²¹ See *In Re Guardianship of Mueller v. Boyle*, 650 So. 2d 698 (Fla. 4th DCA 1995).

VIII. Amendments:

#1 by Judiciary:

Corrects a spelling error in the title by changing the word “fir” to “for.”

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

Bill No. SB 2688Amendment No. 1

915344

CHAMBER ACTION

SenateHouse.
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The Committee on Judiciary recommended the following
amendment:

Senate Amendment

On page 1, line 25, delete the word "fir"

and insert: for

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 520 and CS/SB 494

SPONSOR: Comprehensive Planning Committee, Regulated Industries Committee, Senators
Constantine and Bennett

SUBJECT: Building Safety

DATE: April 19, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Fav/Combined CS
2.	Knudson <i>JK</i>	Deffenbaugh <i>BJ</i>	BI	
3.			FT	
4.			AGG	
5.			AP	
6.			ATD	

I. Summary:

This bill does the following:

- Creates the Swimming Pool and Solar Technical Advisory Committee of the Florida Building Commission;
- Authorizes the Florida Building Commission to determine facility types and criteria for the work covered by facility maintenance permits issued by local governments;
- Revises the Florida Building Code amendment process;
- Revises the procedures for appointments to the Florida Building Commission;
- Provides procedures for review of building code decisions by local building officials;
- Clarifies provisions relating to truss placement plans and the Code;
- Allows a fee owner's contractor, rather than only the fee owner, to use a private provider for building code inspection services;
- Eliminates the requirement that the private provider maintain comprehensive general liability insurance with minimum policy limits of one million dollars per occurrence;
- Restricts local governments ability to use building code fee revenues for non-related activities;
- Provides an expedited adoption of the State Rehabilitation Code;
- Exempts Commission and hearing officer panels from APA rule requirements when reviewing decisions of local building officials;
- Changes the administration of the Florida Building Code Training Program;
- Includes the International Code Council Evaluation Service as an authorized product evaluation entity;

- Authorizes the Commission to suspend (as well as revoke, as is in current law) product approvals or approvals of product evaluation entities; and
- Suspends ch. 9B-72, F.A.C., which relates to local government product evaluation and approval, until June 1, 2005. Requires the Commission to study the rule.

This bill amends the following sections of the Florida Statutes: 120.80, 553.73, 553.74, 553.77, 553.79, 553.791, 553.80, 553.841, 553.8412, and 553.842.

II. Present Situation:

The Florida Building Code

Building codes establish minimum safety standards for the design and construction of buildings by addressing such issues as structural integrity; mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, and exit systems; safe materials; energy efficiency; and accessibility by persons with physical disabilities. In doing so, these regulations protect lives and property, promote innovation and new technology, and help to ensure economic viability through the availability of safe and affordable buildings and structures.

Section 553.73, F.S., provides for the Florida Building Code (Code). The Code was authorized by the 1998 Florida Legislature to be the sole document incorporating all building standards adopted by all enforcement agencies and state agencies that license different types of facilities. The Code was developed and is updated and maintained by a state Commission that works towards consistency of standards throughout the state and full accessibility to information on the standards. The law allows for differences in the standards in different locales based on compelling differences in physical conditions. However, the law establishes procedures for administration of the Code at all levels that will constrain unwarranted differences and ensure the availability of information on local differences to all parties throughout the state.

The law established the Florida Building Commission (Commission) as the body which is responsible for the development of the Code and the other elements of the system which support its implementation. The Commission has 23 members, appointed by the Governor, representing engineers, architects, contractors, building owners and insurers, state and local governments and persons with disabilities.

The Code is updated every three years by the Commission. The Commission may amend the code once each year to incorporate interpretations and update standards upon a finding that delaying the application of the amendment would be contrary to the health, safety, and welfare of the public, or the amendment provides an economic advantage to the consumer. A proposed amendment must include a fiscal impact statement which documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement is established by rule and must include the impact to local government relative to enforcement, the impact to property and building owners, as well as to industry, relative to the cost of compliance.

The Commission is also authorized to hear appeals from decisions of local boards regarding the interpretation of the Code; issue declaratory statements relating to the Code; determine the types of products requiring approval for local or statewide use and provide for the evaluation and

approval of such products, materials, devices, and method of construction for statewide use; and develop a Building Code Training Program.

Non-Binding Interpretations of the Florida Building Code

The 2002 Legislature provided an additional mechanism for guidance on interpreting the Code.¹ It authorized the Commission to recognize an outside entity to consult with Code officials and industry, and to issue non-binding advisory opinions. These advisory opinions were to be developed by licensed Code enforcement officials. The Commission selected the Building Officials Association of Florida (BOAF) as the entity to work with toward this end.

Requests for opinions are received through the Commission's Web site, and are then forwarded to BOAF and its experts on varied subject matters from industry and local building departments. The advice of these experts is directed to an experienced building official who drafts a response and forwards it to a select group of licensed and active Building Code Enforcement Officials familiar with the subject matter as assigned by BOAF.

These officials make the final determination of the response, which then is forwarded to the questioner and posted on both the BOAF site and in the Commission's Building Code Information System. The electronic information system can be queried for advisory opinions and Declaratory Statements by subject area for any section of the Code.

Because the Code is a rule, interpretations of the Code that are of general applicability must comply with the rule making provisions of ss. 120.536 and 120.54, F.S. According to the Department of Community Affairs, necessary binding interpretations of the Code require a more expedited resolution than is afforded by the Code amendment and update process or the rulemaking provisions of ch. 120, F.S.

Alternative Plans Review and Private Provider Inspections

Section 17 of ch. 2002-293, L.O.F., created s. 553.791, F.S., to establish a procedure by which the public could choose to hire an engineer or architect to perform plans review and building inspection services for structures for which building permits are required. Subsection (2) authorizes the fee owner of a building to use and pay a private provider to offer building Code inspection services, subject to a written contract between these parties. The fee owner may use a private provider to offer both plans review and required building inspections, or to use the local enforcement agency for one or both of these purposes.

Subsection (15) of s. 553.791, F.S., authorizes a private provider to perform building Code inspection services under this section only if the private provider maintains insurance for professional and comprehensive general liability with minimum policy limits of \$1 million per occurrence relating to all services performed as a private provider, and including tail coverage for a minimum of 5 years subsequent to the performance of building Code inspection services.

The Building Inspection Division (Division) of the City of Jacksonville in its final draft report assessing the implementation of s. 553.791, F.S., expressed the concern that a potential conflict of interest may exist in the use of private inspectors in commercial projects in which the builder

¹ Chapter 2002-193, s. 16, L.O.F.

is not intended to be the final owner of the completed construction project. The Division's report expresses the concern that a homebuilder's objective is to complete the construction project as quickly as possible and to transfer ownership to the buyer at the time of closing, but allowing the builder to pay for the inspection process discourages failed inspections in order for all parties to make a profit. The Division is concerned that this may endanger the public safety. The final owner of the property may also not know that the builder hired and paid for the inspections on their new home or property.

Building Inspection Fees

Section 553.79(1), F.S., prohibits the construction, erection, alteration, modification, repair, or demolition of any building within this state without first obtaining a permit from the appropriate enforcing agency. Subsection (6) provides that a permit may not be issued for any building construction, erection, alteration, modification, repair, or addition unless the applicant complies with the requirements for plan review established by the Commission within the Code.

Section 553.80(1), F.S., authorizes local governments to assess fees to fund the enforcement of the Code. However, such fees "shall be used solely for carrying out the local government's responsibilities in enforcing the Code."

The Florida Home Builders Association recently conducted a study assessing local government's compliance with the fees provision of s. 553.80, F.S.. The study found the following problems among twelve different local governments:

- Local governments are not tracking and restricting the cumulative fund balance of building permit and inspection activities;
- There is no clear distinction between costs associated with enforcing the building Code and costs incurred in the planning and zoning departments, engineering departments, and other functions performed in the growth management division;
- Other non-enforcement costs are included in the same department and the costs are being subsidized by building permit fees and other fees;
- Some local governments, after subsidizing non-enforcement costs, are accumulating fund balances that could be considered unreasonable amounts;
- Local governments in general have in place adequate accounting and reporting practices for the full range of their financial management and reporting activities but in most instances, they do not appear to apply these tracking systems and accounting practices to building inspection fees; and
- Many local governments have not established any type of public input process, which allows the building community to express their views on the appropriate level of service that they require and are paying for.

Rehabilitation Code

Section 32 of ch. 2001-186, L.O.F., directed the Commission to research the feasibility of adopting a rehabilitation Code for existing buildings. In its report to the 2002 Legislature, the Commission advised that such requirements were feasible and that developing such a Code was warranted. It recommended evaluating the effects of the 2001 Florida Building Code requirements for existing buildings after the Code went into effect, following which needed changes would be determined. It further recommended that the Legislature endorse development

of a rehabilitation Code for one and two family dwellings and that the model Codes are considered as the basis of this new state Code.

Section 2 of ch. 2002-293, L.O.F., in turn, directed the Commission to “develop building Code provisions that may be added to the Code to facilitate the rehabilitation and use of existing structures.” Lawmakers further directed the Commission to “select from available national or international model Codes or the Codes or Code provisions adopted by another State to form the foundation for the Code provisions.” The Legislature provided that the Commission could modify the selected model Codes to meet the specific needs of Florida and that it should seek consensus with fire safety professionals, building officials, land use planners, advocates for persons with disabilities, the construction industry and other interested parties.

The Commission established two committees to work with its Code Administration Technical Advisory Committee to develop draft provisions for the rehabilitation of one and two family dwellings and all other buildings. The International Existing Buildings Code promulgated by the International Code Council was selected as the foundation for these new building requirements. With this as a guide, the Commission then spent several months deliberating the model Code provisions and determining appropriate modifications. Their work was facilitated by the Florida Conflict Resolution Consortium and resulted in a proposed draft Code. The Code’s formula-based approach is based on the ratio of the area of a building being worked on to the total area of the building.

The standard ch. 120, F.S., rule adoption procedures, coupled with the special procedures for code development and implementation of s. 553.73, F.S., and the Commission’s rules of procedure for amending the Florida Building Code, will result in the new Existing Buildings Code not taking effect until January 2005. Therefore, the Commission recommended that adoption and implementation be expedited by legislative authorization to waive the procedures of s. 553.73, F.S., and apply only the standard procedures of ch. 120, F.S. This expedited approach would provide for implementation to proceed in the summer of 2004. The Commission maintains that the new Existing Buildings Code provisions to be included in ch. 34 of the Florida Building Code will improve clarity and consistency in application of the Code while providing flexibility for better tailoring of requirements to rehabilitation projects. They will also facilitate greater rehabilitation and reuse of existing structures, including historic buildings.

Building Code Training

Section 553.841, F.S., requires the Commission to establish the Building Code Training Program. The Commission is to implement, by rule, a core curriculum and advanced module courses relating to the Florida Building Code. This section also:

- Directs the Commission to develop the training program in consultation with various agencies;
- Allows the Commission to enter into contracts with various providers to administer the program;
- Requires that the Commission develop, with the Department of Community Affairs, the Department of Business and Professional Regulation (DBPR), and the State Fire Marshall, a core curriculum and a set of advanced module course work;

- Specifies the information to be contained in the core curriculum and identifies the license categories impacted;
- Requires the Commission to develop, with DBPR and respective licensing boards, an equivalency test for the core curriculum, for each category of license;
- Requires the Commission, with DBPR, develop for use as continuing education units core module work for superintendents, journeyman and residential designers; and
- Requires the respective state boards and the State Fire Marshal to require specialized or advanced core modules as part of a continuing education program.

Product Approval

Product performance standards are integral to the scheme used by building codes to establish minimum building safety and performance standards. Traditionally, products are evaluated for compliance by engineering groups, which are independent of the manufacturers, then their evaluations are provided to the authority having jurisdiction for general approval or acceptance of the product. The use of a product for a specific building is also evaluated by the building designer or builder and approved during plan review and inspection of the building.²

The reforms to the building code system enacted by 98-287, L.O.F., specifically address how products' compliance with the code are to be established and approved for use in Florida.³ The Commission was given the authority to complete the product approval system by administrative rule but was unable to achieve consensus on system specifics prior to the 2000 Legislative session. Consequently, the Commission recommended delaying implementation of the new state system, the continuation of the current system of local approvals until a consensus system is adopted by rule, and that a transition period is provided for implementation of the system after the rules are established.

The 2000 Legislature reviewed the Commission's recommendations and through ch. 2000-141, L.O.F., suspended rule adoption authority and directed the Commission to make consensus recommendations to the 2001 Legislature for their review and action. In addition, ch. 2000-141, L.O.F., enhanced the existing intent language of the law by requiring the system to use private sector evaluations that indicate compliance with the code and ensure that there is an effective government oversight, prior to approving a product's acceptance in Florida.

Section 30 of ch. 2001-186, L.O.F., significantly rewrote the product approval provisions in s. 553.842, F.S., consistent with the Commission's recommendations, as presented in its February, 2001 report to the Legislature. These changes provide for either state or local approval for all products for which the code establishes standards. Approval of a product by the State would be voluntary and at the manufacturer's discretion. Approval is based on the evaluation of a product's compliance with the standards established by the code and validation of the information supporting compliance presented to the approving entity. Manufacturers are also required to operate quality assurance programs to ensure approved products continue to comply with the requirements of the Code.

² Information taken from http://www.floridacommunitydevelopment.org/fbc/index_page/FULL%20Report%20and%20Cover%20-%20Legislature%202003-021303.pdf

³ Information taken from http://www.floridacommunitydevelopment.org/fbc/information/building_Commission.htm#evaluation

Chapter 9B.72, F.A.C., codifies the Commission's recommendation on product approval. The rule provides that all products must comply with standards established by the code and their use must be approved by a building official.

III. Effect of Proposed Changes:

Section 1 creates s. 553.8414, F.S., to require the Florida Building Commission (Commission) to establish the Swimming Pool and Solar Technical Advisory Committee (Committee) to advise the Commission on any matters relating to Building Code standards for swimming pools, spas, and solar equipment. The Commission must appoint members of the Commission in the same manner as members are appointed to the Commission's other technical advisory boards. Chapter 9B-3.004, F.A.C. provides that the chairperson of the Commission appoints all technical advisory committees, and further requires that the chairperson review the technical advisory committees and reappoint or replace members annually.

The Committee must consist of no fewer than ten persons who represent the swimming pool and solar construction industry. The chairperson of the Commission must annually designate a Commission member to serve as the chairperson of the Committee. Committee members must be appointed for two-year terms and may be reappointed at the discretion of the Commission.

Section 2 amends s. 553.73, F.S., to revise of number of provisions relating to the Florida Building Code and the code amendment process.

Paragraph (4)(a) is amended to authorize the Commission to determine facility types and criteria for the work covered by facility maintenance permits issued by local governments. This change implements a recommendation of the Florida Building Commission made in their 2004 Report to the Legislature.

Section 553.73(4)(c), F.S., is amended to change a reference to reflect a change to s. 553.77, F.S., as proposed in section 4 of this bill.

Section 553.73(6), F.S., is amended to specifically require the Florida Building Commission to use the International Family of Codes when updating the Florida Building Code. The Commission may modify the code or incorporate their own interpretations, declaratory statements, appellate court decisions, and approved statewide and local amendments into the Florida Building Code only to the extent that they are needed to accommodate the specific needs of the state. Technical amendments may be incorporated into the code, provided they have been subject to the review procedures required in subsection (3). The rule adopting the updated Florida Building Code may not become effective until 6 months after the completion of the rule adoption process.

Subsection (7)(a) is amended to increase a standard for allowing adoption of technical amendments to the Code. The current standard allows for amendments when the change "has a reasonable and substantial connection with" the health, safety, and welfare of the general public. The proposed standard would require such amendments be "necessary to provide for" the health, safety, and welfare of the general public.

Subsection (7) is also amended to include final orders of the Commission and interpretations of hearing officer panels under s. 553.775(3)(c), F.S., (which is proposed in section 5 of this bill) in the technical amendments that the Commission may incorporate into the code each year.

Subsection 553.73(7)(c) is amended to provide that proposed amendments to the Florida Building Code may not be considered, rather than approved, by the Commission unless they meet the requirements of this section.

In addition, proposed amendments must be reviewed by Commission staff prior to consideration by any technical advisory committee of the Commission. Staff members must reject any proposed amendment that fails to include the currently required fiscal impact statement. Proposed amendments rejected by the staff may not be considered by the Commission or any technical advisory committee.

Section 3 amends s. 553.74, F.S., to revise the appointment of members to the Florida Building Commission. The Governor is required to choose member candidates from lists submitted by respective professional organizations, or any other persons otherwise qualified according to this section. In addition, this section is amended to allow for re-appointment of the air-conditioning and mechanical contractor member and roofing and sheet-metal contractor member, regardless of whether they meet the qualification set by this section.

Section 4 deletes certain provisions of s. 553.77, F.S. regarding the specific powers of the Commission, including the Commission's ability to issue declaratory statements issued pursuant to s. 120.565, F.S., and the ability to hear appeals of the decisions of local boards. The bill also deletes the provisions of s. 553.77(7), F.S., which establish nonbinding interpretations of the Code.

These powers are replaced in the bill by the creation of s. 553.775, F.S., in section 5 of the bill, which would allow the Commission, by rule, to establish an informal process of rendering nonbinding interpretations of the Code.

Section 5 creates s. 553.775, F.S. to set forth procedures for the Commission to review decisions of local building officials and local enforcement agencies regarding interpretations of the code. Local agencies retain the primary responsibility for interpreting the Florida Building Code, consistent with declaratory statements and interpretations by the Commission. While anyone may petition the Commission to issue a declaratory statement, review of local interpretations of the code must be appealed through the following system.

First, the Commission is directed to coordinate with the Building Officials Association of Florida (BOAF) Inc., a statewide organization of municipal and county codes enforcement officials to designate panels composed of five hearing officers to hear requests to review decisions of local building officials. These hearing officers must be members of a statewide organization of codes enforcement officials and licensed as building code administrators and have experience interpreting and enforcing provisions of the code.

The request to review a decision of a local building official's interpretation of the code may be initiated by any substantially affected person. Request for review or petitions must be submitted

to the Commission, who then forwards the information to a panel of hearing officers and to the local building official, and posts the petition on the Building Code Information System. The local building official then provides a written response to the panel. The petitioner then replies to the hearing officers addressing the information provided by the local building official. The panel must then conduct a proceeding to resolve the issue and publish its interpretation. The panel has 21 days after the date the petition is filed to complete the review.

The petitioner may then file an appeal of the decision to the Commission. The burden of proof in any proceeding is on the party who initiated the appeal.

Local decisions declaring structures to be unsafe and subject to repair or demolition are not subject to review under this process. These local decisions may not be appealed to the Commission if the local governing body finds that there is an immediate danger to the health and safety of the public.

The Commission only has advisory powers with respect to any decision of the State Fire Marshal made under ch. 633, F.S.

The Commission may also establish an informal process of rendering non-binding interpretations of the Florida Building Code. The Commission may also refer interpretive issues to organizations that represent those engaged in the construction industry.

Section 6 amends s. 553.79(14), F.S., to state that a truss placement plan is not required to be signed and sealed by an engineer or architect unless prepared by an engineer or architect or specifically required by the code.

Section 7 amends ss. 553.791(2) and (4), F.S., to include a fee owner's contractor, upon written authorization from the fee owner, to choose a private provider to provide building inspection services. The fee owner's contractor would be under the same obligation to notify the local building official at the time of permit application. The bill amends language to include that the notification to the local building official can also take place prior to a private provider providing building Code inspection services.

Subsections (6), (11), (12), and (14) are amended to correct cross-references to provisions amended by this bill, and to make other technical changes or clarifications.

Section 553.791(15), F.S., is amended to eliminate the requirement that the private provider maintain comprehensive general liability insurance with minimum policy limits of one million dollars per occurrence. The bill maintains the current requirement that the private provider maintain professional liability insurance with minimum policy limits of one million dollars per occurrence. If the private provider chooses to secure claims-made coverage to fulfill the insurance requirement, the provider must maintain the 5-year minimum tail coverage.

The terms, claims-based coverage, occurrence-based coverage, and tail coverage are not defined in the bill or the Florida Statutes. Occurrence coverage insures against injury that occurs during the policy period. With occurrence coverage, claims may be made after the policy period. Claims coverage insures injury and claims made during the policy period. With claims coverage, the

insurance claim must be made during the policy period. Claims made after the policy period would not be covered.

The tail coverage is also known as discovery period coverage. Tail coverage supplements a claims policy to give the insured added protection beyond the policy period. The reason for such policies is that act causing injury might not be discovered until after original policy period had terminated.⁴

Finally, this section is amended to provide that occurrence based coverage shall not be subject to any tail coverage requirement.

Section 8 creates subsection (7) of s. 553.80, F.S., to restrict the use of building code fee revenues by local governments. Governing bodies of local governments are authorized to provide a schedule of reasonable fees for the enforcement of the code. The fees and any fines or investment earnings related to the fees are to be used solely for carrying out the local government's responsibilities in enforcing the code. (Prohibited uses of fee revenue are specified.) Any unexpended balance must be carried forward to fund allowable activities or be refunded.

The term "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, re-inspections, building permit processing, and building code enforcement; and enforcement against unlicensed contractor activity to the extent not funded with other user fees.

Section 9 creates an unspecified section of Florida Law to allow the Commission to expedite the adoption and implementation of the State Existing Building Code (Rehabilitation Code) as part of the Florida Building Code. Under the current code adoption schedule, the code will become effective January 1, 2005. If this provision is adopted, it is anticipated that the adoption schedule would be moved up by six months.

Section 10 creates paragraph (17)(c) of s. 120.80, F.S., to exempt the Commission and hearing officer panels appointed by the Commission (created in section 5) from provisions of ss. 120.565, 120.569., and 120.57, F.S., while conducting reviews of decisions by local building officials related to the Florida Building Code. These sections impose standard procedures for agency and department rule development.

Section 11 amends s. 553.841, F.S., to change the administration of the Florida Building Code Training Program. The Florida Building Commission is required to offer voluntary accreditation of advance module courses relating to the code and its enforcement. Obsolete provisions relating to the development of the program are deleted. Provisions requiring consultation with DCA, DBPR, the State Fire Marshal, the State University System, and the Division of Community Colleges are deleted. The authority to contract with specified entities is deleted. Provisions relating to equivalency test relating to the code for persons licensed by the Department of Business and Professional Regulation are deleted.

⁴ *U.S. Fire Ins. Co. v. Fleekop*, 682 So.2d 620 (Fla. 3rd DCA 1996)

Finally, courses approved by DBPR as required by the respective practice acts and ch. 455, F.S., are deemed approved by the Commission.

Section 12 amends s. 553.8412(3), F.S., to replace a reference which was re-designated in the previous section.

Section 13 amends s. 553.842(9), F.S., to include the International Code Council Evaluation Services as one of the evaluation entities the Commission is charged to specifically approve as product evaluation entities that meet the criteria for approval.

Subsection (15) is amended to authorize the Commission to suspend (as well as revoke, as is in current law) product approvals or approvals of product evaluation entities.

Section 14 creates an undesignated section of Florida Law to suspend ch. 9B-72, F.A.C., which relates to local government product evaluation and approval, until June 1, 2005.

The Commission is directed to create a product approval advisory group to study the effectiveness and financial impact on the construction industry by the local and state product approval process established in s. 553.842, F.S., and the requirements of the suspended rule. The study group must submit its findings to the Governor, Senate President, and Speaker of the House by January 15, 2005. The report must contain specific recommendations on how and whether the product approval process should be modified or amended to enhance and facilitate compliance with rule and s. 553.842, F.S.

The group is to be comprised of 13 members, 7 of whom must be current members of the Program Oversight Committee of the Florida Building Commission. The remaining membership of the product approval advisory group must represent the broad geographical areas of the state and shall be constituted as follows. One member is selected by each of the following:

- the Building Officials Association of Florida;
- the Florida Construction Coalition;
- the Florida Engineering Society;
- the Florida Association of the American Institute of Architects;
- the Florida League of Cities; and
- the Florida Association of Counties.

The Chairman of the Program Oversight Committee is to serve as the Chairman of the group and the Vice Chairman must be selected from among the remaining six members.

Section 15 provides that the bill will take effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

Section 8 creates subsection (7) of s. 553.80, F.S. to restrict the use of building code fee revenues, requiring they be used solely for carrying out the local government's responsibilities in enforcing the code.

B. Private Sector Impact:

None

C. Government Sector Impact:

This bill creates the Swimming Pool and Solar Technical Advisory Committee of the Florida Building Commission, and requires the Commission to create a product approval advisory group to study the local and state product approval process established in s. 553.842, F.S., and ch. 9B-72, F.A.C. The Commission is likely to incur administrative costs in administering the Committee and advisory group.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 520 & CS for SB 494Amendment No. 

501662

1

Senate

CHAMBER ACTION

House**BANKING AND INSURANCE****DATE:** 4/19/04**TIME:** 1:00 pm

Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

On page 2, between lines 24 and 25,


insert:

Section 1. Subsections (3), (4), (5), (6), (7), and (12) of section 553.415, Florida Statutes, are amended, to read:

553.415 Factory-built school buildings.--

(3) ~~Within 90 days after the effective date of this section,~~ The department shall adopt by emergency rule regulations to carry out the provisions of this section. Such rule shall ensure the safety of design, construction, accessibility, alterations, and inspections and shall also prescribe procedures for the plans, specifications, and methods of construction to be submitted to the department for approval.

(4) A manufacturer of factory-built school buildings designed or intended for use as school buildings shall submit to the department ~~for approval~~ the manufacturer's plans,

Bill No. CS for SB 520 & CS for SB 494Amendment No.  501662

1 specifications, alterations, and methods of construction for
2 any factory-built school building that has not previously been
3 submitted to the department together with the approval of a
4 certified plans examiner for such building. ~~The department is~~
5 ~~authorized to charge manufacturers a fee which reflects the~~
6 ~~actual expenses incurred for the review of such plans and~~
7 ~~specifications.~~

8 (5) ~~The department, in accordance with the standards~~
9 ~~and procedures adopted pursuant to this section and as such~~
10 ~~standards and procedures may thereafter be modified,~~ shall
11 approve or reject such plans, specifications, and methods of
12 construction. The department may delegate its plans review
13 authority to a state agency or public or private entity;
14 however, the department shall ensure that any person
15 conducting plan reviews is a certified plans examiner pursuant
16 to part XII of chapter 468. Any person employed by a municipal
17 or county government, school, or community college district or
18 a private entity who is a certified plans examiner under part
19 XII of chapter 468 may approve a manufacturer's plans,
20 specifications, and methods of construction. Approval of the
21 department shall not be given if a certified plans examiner
22 certifies that unless such plans, specifications, and methods
23 of construction are in compliance with the Florida State
24 Uniform Building Code for Public Educational Facilities and
25 ~~department rule. After March 4, 2002, the Uniform Code for~~
26 ~~Public Educational Facilities shall be incorporated into the~~
27 ~~Florida Building Code, including specific requirements for~~
28 ~~public educational facilities and department rule.~~

29 (6) The review and approval of any site plan locating
30 a factory-built school building shall be performed solely by
31 the school district or community college district acquiring

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1 the factory-built school building. The department may delegate
2 its plans review authority to a state agency or public or
3 private entity; however, the department shall ensure that any
4 person conducting plans reviews is a certified plans examiner,
5 pursuant to part XII of chapter 468.

6 (7) A standard plan approval may be obtained from the
7 department for factory-built school buildings and such
8 department-approved plans shall be accepted by the enforcement
9 agency as approved for the purpose of obtaining a construction
10 permit for the structure itself. The department, or its
11 designated representative, shall determine if the plans
12 qualify for purposes of a factory-built school shelter, as
13 defined in s. 553.36. The department may delegate its
14 plans review authority to a state agency or public or private
15 entity; however, the department shall ensure that any person
16 conducting plans reviews is a certified plans examiner
17 pursuant to part XII of chapter 468.

18 (12) Each factory-built school building used for
19 educational purposes shall bear the insignia of the department
20 and a data plate. Application for insignia shall be made by
21 the third-party-approved inspection agency designated in
22 accordance with s. 553.37(9). The data plate shall be
23 fabricated by the manufacturer of durable material in
24 accordance with s. 553.11. Such insignia and identification
25 label shall be permanently affixed by the manufacturer in the
26 case of newly constructed factory-built school buildings, or
27 by the manufacturer or contractor performing the alterations
28 department or its designee in the case of an existing
29 factory-built building altered to comply with provisions of s.
30 1013.20.

Bill No. CS for SB 520 & CS for SB 494Amendment No.  501662

1 (Redesignate subsequent sections.)

2

3

4 ===== T I T L E A M E N D M E N T =====

5 And the title is amended as follows:

6 On page 1, line 2, after the semicolon,

7

8 insert:

9 amending s. 553.415, F.S.; deleting time

10 deadline requiring the Department of Community

11 Affairs to adopt emergency rules; deleting the

12 department's authority to charge manufacturers

13 a fee for the review of its plans and

14 specifications for construction of a

15 factory-built school building; authorizing the

16 department to delegate its authority to renew

17 plans to another entity having a certified

18 plans examiner; providing that, if a certified

19 plans examiner certifies that plans and

20 specifications of construction are in

21 compliance, the department is required to give

22 its approval; requiring that review and

23 approval for any site plan locating a

24 factory-built school building be performed by

25 the specified school district; requiring each

26 factory-built school building to bear the

27 insignia of the department and a data plate;

28 providing application for the insignia;

29 providing that the manufacturer or the

30 contractor performing the alterations to the

31 factory-built school building may permanently

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Amendment No. _____  501662

affix the insignia and identification label;

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Amendment No.  314378

Senate

CHAMBER ACTION

House

2

BANKING AND INSURANCE

DATE: 4/19/04

TIME: 1:15 pm

Senator Geller moved the following amendment:

Senate Amendment (with title amendment)

On page 38, lines 5 and 6, delete those lines

and insert:

Section 14. Effective January 1, 2005, all new or retrofitted construction on essential facilities, as defined, in ASTM E 1996-02, paragraph 6.2.1.1. (enhanced protection for window and door coverings) that uses state or federal grants shall meet ASTM level E impact protections.

Section 15. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 2, line 21, delete that line

and insert:

a report; requiring construction on certain

Bill No. CS for SB 520 & CS for SB 494Amendment No.  314378

1 grant-funded facilities to meet specified
2 impact protection criteria; providing effective
3 date.
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

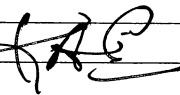

BILL: CS/SB 2092

SPONSOR: Judiciary Committee and Senators Villalobos and Smith

SUBJECT: Financial Protection for Elderly Persons

DATE: April 19, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Lang	JU	Fav/CS
2.	Parham	Wilson	HC	Fav/2 amendments
3.	Emrich 	Deffenbaugh 	BI	
4.			ACJ	
5.			AP	
6.				

I. Summary:

CS for SB 2092 creates the Financial Protection for the Elderly Act. The measure provides a statutory cause of action for any person over age 60, defined as an “elderly person,” against a financial institution due to the financial exploitation of that person by such institution. An elderly person may recover civil damages, including attorneys fees and costs, plus punitive damages which are capped at \$1 million. The bill defines financial exploitation to mean obtaining or using an elderly person’s moneys, funds, assets, or property by deception, intimidation, or by unfair or unconscionable acts or practices.

The bill also authorizes the Attorney General to investigate and file civil actions in cases of financial exploitation against an elderly person. Funding for the Elder Victims Trust Fund, created under separate legislation,¹ includes one-half of all punitive damages awarded and moneys received by the Attorney General for attorney’s fees and costs of investigation or litigation under this authority.

The bill requires the Department of Elderly Affairs to create statewide initiatives to educate the public, including the elderly, law enforcement, judiciary, and social service professionals of deceptive and unfair acts against the elderly.

The bill creates the following sections of the Florida Statutes: 410.701, 410.702, 410.703, 410.704, and 410.705.

The bill creates an undesignated section of law.

¹ SB 2090 creates the Elder Victims Trust Fund.

II. Present Situation:

Adult Protective Services

The Department of Children and Family Services, (DCF or department) Adult Protective Services (APS) program, mandated by ch. 415, F.S., is a system of specialized social services directed toward protecting vulnerable adults who are unable to manage their own affairs, from further occurrences of abuse, neglect, or exploitation.² Assessment of an individual's need for protective services is initiated in response to a reported allegation of abuse, neglect, or exploitation. The four components of APS are:

- The on-site investigation of all reports of alleged abuse, neglect, or exploitation;
- Determination of immediate risk to the vulnerable adult and the provision of necessary emergency services;
- Evaluation of the need for and provision of on-going protective supervision; and
- Provision or arrangement of on-going protective services.

The department also administers the Florida Abuse Hotline in Tallahassee to receive reports alleging abuse, neglect, or exploitation of any vulnerable adult. Program services are provided locally through the department's 15 service district offices district staff conduct adult protective investigations and provide case management and referral services for adult abuse victims.

The DCF collects statistical data on complaints of exploitation which are reported annually. The agency database tracks complaints for "maltreatments or exploitation." However, the database does not currently collect information specific to financial exploitation. The total number of complaints received by DCF related to "maltreatments or exploitation" requiring investigation in

² Federal definitions of elder abuse, neglect, and exploitation appeared for the first time in the 1987 Amendments to the Older Americans Act. These definitions were provided in the law only as guidelines for identifying the problems, and not for enforcement purposes. Currently, elder abuse is defined by state laws, and state definitions vary considerably from one jurisdiction to another in terms of what constitutes the abuse, neglect, or exploitation of the elderly. Broadly defined, however, there are three basic categories of elder abuse: (1) domestic elder abuse; (2) institutional elder abuse; and (3) self-neglect or self-abuse. In most cases, state statutes addressing elder abuse provide the definitions of these different categories of elder abuse, with varying degrees of specificity. Domestic and institutional elder abuse may be further categorized as follows:

- Physical abuse is defined as the use of physical force that may result in bodily injury, physical pain, or impairment.
- Sexual abuse is defined as non-consensual sexual contact of any kind with an elderly or disabled person or with any person incapable of giving consent.
- Emotional or psychological abuse is defined as the infliction of anguish, pain, or distress through verbal or nonverbal acts. Emotional/psychological abuse includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment.
- Neglect is defined as the refusal or failure to fulfill any part of a person's obligations or duties to an elder. Neglect may also include failure of a person who has fiduciary responsibilities to provide care for an elder (e.g., pay for necessary home care services) or the failure on the part of an in-home service provider to provide necessary care.
- Exploitation is defined as misusing the resources of an elderly or disabled person for personal or monetary benefit. This includes taking Social Security or SSI (Supplemental Security Income) checks, abusing a joint checking account, and taking property and other resources.

fiscal year 2002-2003 was 9,230. The chart below reports the numbers by each exploitation category.

Type of Exploitation	Verified	Some Indication	No Indication
Obtains or uses by Deception/Intimidation	618	1142	4532
Endeavors to obtain or use by Deception/Intimidation	79	177	910
When Victim Lacks Capacity	218	284	1194

Source: DCF, March 26, 2004.

The National Center on Elder Abuse (NCEA) is the major source of available statistics on elder abuse, neglect, and exploitation in the U.S. NCEA collects and analyzes national data on cases referred to and investigated by adult protective services, and serves as a resource to investigators worldwide. The 1998 National Elder Abuse Incidence Study³ ranked, in order of frequency, the types of elder mistreatment:

1. Neglect;
2. Emotional/Psychological Abuse;
3. Physical Abuse;
4. Financial/Material Exploitation; and
5. Abandonment.

Protection Against Financial Abuse and Neglect of Adults

Various Florida statutes provide protection to elderly persons against specified financial abuse and exploitation. Under ch. 415, F.S., a person defined as a “vulnerable adult” may file a civil cause of action and recover actual and punitive damages, reasonable attorney’s fees, and costs for specified acts of financial exploitation.⁴ The action may be brought by the adult, that person’s guardian, by an organization acting on behalf of the adult, or the personal representative of the estate of the deceased adult. Victims over the age of 65 may move the court to advance the trial on the docket. In order to seek relief, however, the victim must suffer from the infirmities of aging.⁵ Section 415.102(7), F.S., defines “exploitation” to mean a person who:

- Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s

³ National Center on Elder Abuse. September 1998. *National Elder Abuse Incidence Study: Final Report*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families and Administration on Aging.

⁴ Section 415.1115, F.S.

⁵ A “vulnerable adult is defined as someone who is 18 years old or older, and whose ability to perform normal activities is impaired because of a mental, emotional, long-term physical or developmental disability or dysfunctioning, brain damage or the infirmities of aging. In 2000, the terms “elderly persons and disabled adult” were uniformly replaced with the term “vulnerable adult” in ch. 415, F.S. See s. 415.102(26), F.S.

funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

- Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

“Exploitation” may include, but is not limited to:

- Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
- Unauthorized taking of personal assets;
- Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
- Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

Chapter 825, F.S., governs criminal actions pertaining to the abuse, neglect, and exploitation of elderly persons and disabled adults relating to their funds, assets, or property. Under the chapter, an elderly person is someone who is 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age, organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that such person is impaired.⁶ A disabled adult is a person 18 years of age or older who suffers from a condition of physical or mental incapacitation. Section 825.103, F.S., provides various criminal penalties against those persons convicted of financially abusing elderly persons and disabled adults and defines exploitation as:

- Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's...funds, assets, or property with the intent to temporarily or permanently deprive the elderly person...of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:
 - Stands in a position of trust and confidence with the elderly person or disabled adult; or
 - Has a business relationship with the elderly person or disabled adult.
- Obtaining or using...an elderly person's...funds, assets, or property with the intent to...deprive the elderly person...of the use, benefit, or possession of the funds, assets, or property...by a person who knows or reasonably should know that the elderly person...lacks the capacity to consent.

Under s. 825.103, F.S., the charge is a first degree felony for exploitation of an elderly person where the funds, assets, or property are valued at \$100,000 or more; a second degree felony

⁶ Chapter 812, F.S. and s. 825.101(5), F.S.

where funds are valued at between \$20,000 and less than \$100,000; and, a third degree felony where funds are valued at less than \$20,000.⁷ Ignorance of a person's age is not a defense.⁸

Chapter 772, F.S., the Civil Remedies for Criminal Practices Act, creates a civil cause of action for violations of certain enumerated property, theft, or exploitation crimes.⁹ However, these prohibited acts involve persons who possess criminal intent at the time of committing the financially-related crime.¹⁰ Although punitive damages are not authorized under this section, a person who proves injury by clear and convincing evidence may recover up to three times actual damages caused.¹¹

Under part II of ch. 501, F.S., the Florida Deceptive and Unfair Trade Practices Act (Act), a state attorney, or the Attorney General (if the violation affects more than one jurisdiction) may bring a civil action on behalf of a consumer¹² for a violation of the Act.¹³ However, under s. 501.212, F.S., banks, savings and loan associations and insurance companies and other entities regulated by the Department of Financial Services, the Office of Insurance Regulation, and the Office of Financial Regulation are specifically exempt from the provisions of the Act.

Section 775.0844, F.S., known as the White Collar Crime Victim Protection Act, provides for criminal sanctions against those persons who deceive or cheat individuals out of their property. Section 812.0145, F.S., provides specific penalties for persons who are convicted of theft of more than \$1,000 from a person 65 years of age or older.

Financial Institutions

Insurance Companies

Pursuant to the Insurance Code,¹⁴ insurers and insurance agents are regulated and subject to administrative oversight by the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS). Insurance companies and agents are specifically prohibited from engaging in specified unfair methods of competition and unfair or deceptive acts and practices under s. 626.9541, F.S. Twenty seven unfair acts are specified which include financial-related violations such as misrepresentation, false information, and advertising of insurance policies; unlawful rebates; unfair claim practices; twisting;¹⁵ illegal dealings in premiums; collecting excess or reduced charges for insurance; insurance transactions through certain credit card facilities; interlocking ownership and

⁷ Section 825.103(2), F.S.

⁸ Section 825.104, F.S.

⁹ Sections 772.103, 772.104, and 772.11, F.S.

¹⁰ These crimes involve usurious practices, violations of the secure transactions act, unlawful telemarketing activities, illegal insurance transactions, and credit card crimes. (s. 772.102, F.S.).

¹¹ Section 772.104, F.S.

¹² Defined as an individual, firm, business, association, etc.

¹³ Violations include any rule promulgated pursuant to the Federal Trade Commission (FTC) Act, 15 U.S.C., ss. 41 et seq.; any standards of unfairness and deception set forth by the FTC, and any rule, statute or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts.

¹⁴ Chapters 624-632, 634, 635, 641, 642, 648, and 651, F.S.

¹⁵ Twisting is knowingly making any misleading representations with respect to insurance policies for the purpose of inducing any person to forfeit, surrender, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.

management of other insurers; sliding;¹⁶ and, churning.¹⁷ Insurers or agents engaging in such acts may be fined, depending on whether the act is nonwillful or willful, or otherwise sanctioned by the OIR. Harsher penalties could mean the insurer would suffer the loss of its certificate of authority to transact business in Florida, or the agent could lose his or her license.

Under ss. 626.989 and 626.9891, F.S., the Division of Insurance Fraud is afforded police powers to investigate insurers and agents who commit criminal violations pertaining to various crimes, including financial crimes, ranging from theft to insurance fraud. Insurance companies are also subject to market conduct examinations by the OIR which are thorough reviews of its records, accounts, documents, files and assets.¹⁸ The OIR also contacts insurers, in specified cases, when the agency receives consumer complaints in order to insure the company responds appropriately.

Currently, any person may bring a civil action against an insurer for economic damages based upon the insurer's actions when the person is damaged by specific violations of the Insurance Code (which include financial related violations) or the commission of certain "bad faith" acts. Under the civil remedy¹⁹ provision, a person may obtain damages, so-called "one-way" attorneys' fees, as well as costs, and, in certain cases, punitive damages.²⁰ These violations include acts related to unfair claim settlement practices, illegal dealing in premiums, excess or reduced charges for insurance, coercion of debtors, and when the insurer did not attempt in good faith to settle claims or failed to promptly settle claims when the obligation to settle such claims was clear. Persons may also bring a civil cause of action against insurers under their insurance policy or contract and if they prevail obtain one-way attorneys fees and enhanced attorneys fees.²¹

Banking Institutions

Through the Office of Financial Regulation (OFR), state-chartered financial institutions are licensed, examined and regulated to ensure that private funds invested in Florida's state-chartered financial institutions are protected from potential loss due to failure or insolvency.²² The OFR has regulatory authority over state-chartered commercial banks, credit unions, savings associations, nondeposit trust companies, international banking agencies, representative offices and administrative offices. Nationally or federally chartered financial institutions are chartered and regulated by various agencies of the federal government and OFR does not have regulatory authority over those entities.²³ The

¹⁶ Sliding is representing to an applicant that a specific ancillary product is required or is included in the policy; or charging an applicant for an ancillary product in addition to the insurance coverage, without informed consent of the applicant.

¹⁷ Churning is the practice whereby policy values in an existing life insurance policy are utilized to purchase another policy with that same insurer for the purpose of earning additional premiums, fees or commissions without a reasonable basis that the replacement will result in a actual benefit to the insured, in a fashion that is fraudulent when the applicant is not informed.

¹⁸ s. 624.316, F.S. The OIR conducts market conduct examinations of domestic insurers once every 3 years.

¹⁹ s. 624.155, F.S.

²⁰ Punitive damages may be obtained when the violations constitute a "general business practice" of the insurer. The one-way attorneys fees provision allows only insureds to be awarded attorneys fees if they prevail, but not insurers. Also, attorneys fees may be enhanced subject to the loadstar calculation and contingency risk multipliers. Loadstar is based on the number of hours reasonably expended by an attorney multiplied by an hourly rate. A contingency risk multiplier is a number (ranging from 1.0 to 2.5) which is applied to contingency fee or fee-authorizing statutory provisions. A court may add the multiplier to a fee based upon specified contingency risk factors or subtract the multiplier from a fee based on the results obtained. These factors are not authorized for the insurer's attorney if the insurer prevails in such litigation.

²¹ s. 627.428, F.S.

²² Ch. 658, F.S.

²³ To form a national bank, the organizing group must file an application with the Comptroller of the Currency. The Comptroller then reviews the application and, if all criteria are satisfied, issues the charter. National banks derive their basic

agency processes all applications for new banks, savings associations, foreign banks, credit unions and trust companies. Applications for acquisitions, mergers, cross-industry conversions, changes of control, requests for trust powers and branches are also processed by OFR.

Under s. s. 415.1034(1)(a)8, F.S., banks are required to report cases of adult abuse, neglect, or exploitation to the Department of Children and Family Services (DCF). As noted above, “exploitation” includes unauthorized taking of personal assets, misappropriation or transfer of moneys belonging to a vulnerable adult. Specifically, banks, saving and loan, or credit union officer, trustee, or employee who knows, or has reasonable cause to suspect, that a vulnerable adult²⁴ has been or is being abused, neglected, or exploited must immediately report such knowledge or suspicion to the central abuse hotline of the DCF. The statute outlines the procedures and information which must be submitted to the agency.

Securities Regulation

The Office of Financial Regulation (OFR) is also responsible for the enforcement of Chapter 517, F.S., the Florida Securities and Investor Protection Act (Act). The Act is designed to protect the investing public from investment and securities fraud while facilitating the efficient creation of capital. All applications to register securities for sale in Florida are reviewed to ensure that investors have access to full and fair disclosure of all relevant investment information and that the terms of the offering are “fair, just, and equitable” for the investor. The review is also conducted to determine if the business of the issuer is based on sound financial principles.

The Act requires that, in most instances, firms or individuals selling or offering to sell securities or offering investment advice in or from Florida must be registered. Dealers and investment advisers conducting business from a branch in Florida are required to register the location as a branch office. The OFR reviews firm and agent applications to ensure that unqualified firms and individuals are not allowed to conduct business in Florida. This review protects the investing public and the reputation of the industry.

The anti-fraud provisions of the Act make it unlawful for a person to engage in any fraudulent conduct when rendering investment advice or in connection with the offer, sale or purchase of any investment or security. Further, registrations of dealers, investment advisers, associated persons and branch offices may be denied, revoked, restricted or suspended. Such action may be taken if the registrant or applicant has violated any provision of the Act or any department rule, engaged in any fraudulent conduct, demonstrated unworthiness to transact business or is of bad business repute.

Privacy Issues

There are current federal laws which regulate the sharing of information by banks and other financial institutions. In 1999, the Gramm-Leach-Bliley Act²⁵ established a set of comprehensive privacy laws at the federal level applicable to any firm that provides financial services. The law:

powers from federal law (National Banking Act) while state bank operations are primarily outlined under ch. 658, F.S. However, there are exceptions. Where issues of national policy prevail, state banks must follow the relevant federal laws. Also, national banks may be subject to state statutes whenever federal law defers to state practices.

²⁴ See, footnote 5.

²⁵ The GLBA is under 15 U.S.C. 6801 et seq.

- requires annual customer notification of privacy policies;
- allows customers to “opt-out” from having their information shared with third-parties;
- contains prohibitions on the disclosure of account information; and,
- sets regulatory standards to protect security and confidentiality.

The Fair Credit Reporting Act²⁶ gives consumers the ability to stop the sharing of credit application information or other personal information. The FCRA also gives consumers the power to stop unwanted credit solicitations. Under the Electronic Fund Transfer Act,²⁷ consumers must be informed of a financial institution’s information-sharing practices with regard to any electronic transaction, which includes virtually all checking, savings and other deposit accounts. The Right to Financial Privacy Act²⁸ protects consumer records maintained by financial institutions from improper disclosure to federal government officials or agencies. Also, the Telephone Consumer Protection Act²⁹ gives consumers the right under federal law to stop telemarketing calls from a particular company.

Consumer Protection

There are a number of federal consumer protection regulations that detail particular protections and remedies pertaining to financial institutions. For example, the Federal Truth in Lending Act (TILA), 15 U.S.C. § 1601, et seq., (implemented in Regulation Z, 12 C.F.R. Part 226) places a regulatory burden on all creditors, including financial institutions, making loans for personal, family or household purposes. The law requires the lender to make specific, detailed and substantive disclosures of the information the consumer needs to make a wise credit choice. Those disclosures include the amount financed, the finance charge (the combination of all interest plus the additional fees and charges that are levied on a credit facility), and the annual percentage rate (the percentage rate yielded by dividing the total finance charge over the life of the loan). These disclosures must be set apart and clearly and conspicuously printed on the loan document.

The TILA imposes other limitations on specific types of loans that may be of particular value to the elderly. Certain “high interest” loans and reverse mortgages require particular disclosures so the consumer understands the transaction. These loans are also subject to specific fee limitations that keep lenders from overreaching. Creditors violating TILA can be compelled to make refunds or adjustments and if they knowingly and willfully provide false or inaccurate information or fail to provide required information, a creditor or potential creditor is subject to criminal liability.

As to the issue of credit cards, section 15 U.S.C. § 1642, provides that “[n]o credit card shall be issued except in response to a request or application therefore. A consumer is protected from any liability for unauthorized use of the credit card that exceeds \$50.00. (15 U.S.C. § 1645.) The issuer of the credit card cannot impose any liability for unauthorized use of the credit card if the lender has not made specifically required disclosures regarding the potential liability and provided the card issuer gives the consumer notice of how to report lost or stolen credit cards.

²⁶ The FCRA is under 15 U.S.C. 1681 et seq.

²⁷ The EFTA is under 15 U.S.C. 1693 et seq.

²⁸ The RFPA is under 15 U.S.C. 3401 et seq.

²⁹ The TCPA is under 15 U.S.C. 6501 et seq.

If the consumer disputes a charge made on the card, and the card issuer (bank) fails to satisfactorily resolve the dispute, the consumer may assert against the card issuer all the claims (other than tort claims) and defenses arising out of the transaction and any claims arising out of the failure to satisfactorily resolve the dispute. (s. 12 C.F.R. § 226.12(c).

Under Florida law, ch. 737, F.S. (Trust Administration) and ch. 733, F.S. (Administration of Estates) outline the duties and obligations of the financial institution to the extent not superceded by the trust document itself. Both statutory provisions provide for the personal liability of fiduciaries who fail to act appropriately in the fulfillment of their duties and attorneys' fees may be awarded to the prevailing party. Florida law also requires financial institutions to maintain the confidentiality of books and records relating to customers. (s. 655.059, F.S.)

Arguments

Proponents of this measure state that this bill is necessary because elderly persons are many times the victims of deceptive and unfair acts by certain financial institutions. Providing all such persons with a legal cause of action against these institutions (as opposed to limiting such actions only to adults who are infirm or mentally incapacitated, as is the current law) is critical in order for such persons to be compensated for their economic damages. Also, if the elderly person prevails, half of the punitive damages will be used to educate adults, law enforcement, and others as to financial exploitation of the elderly.

According to these proponents, some seniors say they were convinced to liquidate CDs, stocks, and savings accounts to fund annuities, for example, only to discover these actions were unfair and costly.³⁰ In one class action case recently, First USA Bank and its corporate parent, Bank One, were ordered to pay \$1.3 million to settle a lawsuit filed by 28 states and Puerto Rico, charging that the bank permitted telemarketing firms to use deceptive practices to obtain business from bank customers. Specifically, the banks provided customer lists and encrypted credit card numbers to telemarketing firms who then paid back a percentage of their sales to the banks.³¹

Financial institutions assert that they are already heavily regulated by a plethora of federal and state laws, noted above, which protect all persons from unfair and deceptive financial practices by such institutions. Representatives with such institutions state that many of the terms of the bill are not defined, particularly the terms used in the definition of "financial exploitation," including the words deception, intimidation, or unfair. The vagueness of these provisions could capture perfectly legitimate transactions, including repossessing a car for failure to pay, collecting on an overdrawn account, canceling an insurance policy for failure to pay premiums, or enforcing a past due loan contract.

³⁰ One example concerned an 83-year old widow who confided her money worries to a teller at her local bank. The teller suggested she speak with their financial planner who persuaded the widow to move her funds (\$120,000) into variable annuities, which many experts suggest is extremely unsuitable for the elderly due to its exposure to stock-market risks and the heavy surrender penalties it imposes on cash withdrawals. Such annuities carry large commissions for those who sell them these proponents argue. Soon after putting her funds into these annuities, the value of the widow's investments dropped by more than 20 percent.

³¹ April 22, 2003, ConsumerAffairs.com.

III. Effect of Proposed Changes:

In summary, this legislation provides many of the same remedies found in chs. 415 and 825, F.S., as outlined above in the Present Situation section. However, in this bill, a cause of action accrues to any adult over the age of 60, and it does not require the adult to be judged impaired from the infirmities of aging as contained in current law.

Under this bill and also in current law (in ch. 415, F.S.), if the elderly person prevails in their civil action against a person who engages in financial exploitation, the person is entitled to recover reasonable attorney's fees and costs, and punitive damages. However, this bill caps a punitive award at \$1 million and provides that half of the award shall be deposited into the Elder Victims Trust Fund. These funds shall then be used to educate the elderly, law enforcement and others about financial exploitation of the elderly. This bill also allows the Attorney General to bring action against a person that has engaged in the financial exploitation of the elderly and provides criminal penalties similar to those found in ch. 825, F.S.

Section 1. Creates the "Financial Protection for the Elderly Act."

Section 2. Creates s. 401.701, F.S., providing legislative intent. This section specifies that the Legislature recognizes that elderly persons are frequent victims of deceptive and unfair acts and business practices and are often unusually vulnerable to these acts. It is also the intent of the Legislature that these provisions are to be construed liberally to provide for the protection of elderly persons and to provide the elderly, both individually and collectively, with recourse from financial exploitation.

Section 3. Creates s. 401.702, F.S., to provide definitions specific to this act including the following terms:

- "deception" - means a false or misleading misrepresentation of material fact; or, an omission of material fact which fact is reasonably necessary in order to make the representations not misleading;
- "department" - Department of Elderly Affairs;
- "elderly person" - a person older than 60 years of age;
- "financial institution" - includes a bank, bank holding company, credit card bank, banking organization, savings association, trust company, credit union, investment company, insurance company, or money-market mutual fund;
- "financial exploitation" - is to obtain, or endeavor to obtain, an elderly person's money, funds or property by deception or intimidation, or by unfair or unconscionable acts or practices. The term includes any act causing, bringing about, participating in, facilitating, counseling, or aiding or abetting financial exploitation of an elderly person;
- "intimidation" - means communication by word or act to an elderly person that he or she will be deprived of food, clothing, shelter, medicine, money, or financial support, or suffer physical violence;
- "obtains or uses" - means taking or exercising control over funds or assets; or, making use or transfer of funds or assets;
- "unconscionable" - must be determined by the court which must consider whether an act is unconscionable, including whether:

1. the defendant took advantage of an elderly person's inability to protect his or her interests because of mental or physical infirmity, ignorance, illiteracy, or inability to understand the language of an agreement;
2. the elderly person was unable to materially benefit from the transaction;
3. the defendant knew or should have known that there was no reasonable probability that the elderly person could pay a financial obligation;
4. the defendant induced the elderly person into the transaction to the person's detriment;
5. the act or practice of the defendant shocks the conscience or offends public policy; or
6. the defendant seeks a waiver of the rights and remedies under this bill.

Section 4. Creates s. 410.73, F.S., relating to civil actions against financial exploitation. This section declares financial exploitation of an elderly person by a financial institution unlawful and against public policy of the state. This section provides for a cause of action in a circuit court for an elderly person to obtain a declaratory judgment, without regard to any other remedy which an elderly may be entitled, or to enjoin a violator of the provisions of this section.

This section provides that if an elderly person suffers injury or loss as a result of a violation of this section, he or she may bring an action for damages, including punitive damages. Prevailing plaintiffs may recover reasonable attorney's fees and costs.

This section specifies that a guardian, family member, person, or organization acting on behalf of the elderly person with certain consent, or the personal representative, executor, or trustee is granted standing to sue if an elderly person is deceased, and that if the person dies, this does not cause the court to lose jurisdiction of any claim for relief under this section.

An elderly person is authorized to move the court to advance the trial on the docket, and the presiding judge may advance the trial, after considering the person's age and health. The motion may be served with the civil complaint or at any point thereafter.

This section provides that the Attorney General is authorized to investigate, administer oaths, and subpoena witnesses, and to bring a civil action in circuit court to obtain a declaratory judgment or enjoin a violator, or for actual damages or restitution on behalf of an elderly person. Costs and fees will be awarded in prevailing cases to the Attorney General, to be deposited in the Elder Victims Trust Fund.

Section 5. Creates s. 410.704, F.S., relating to limitations on punitive damages. An award of punitive damages under this section may not exceed \$1 million. The \$1 million limitation does not prohibit a court from exercising discretion in determining the adequacy of an award of punitive damages which is less than three times the amount of compensatory damages. The jury may not be told of the provisions of this section.

Despite any law to the contrary, the punitive damages awarded under this section are to be divided equally between the claimant and the Elder Victims Trust Fund as follows:

- The clerk of the court is required to transmit a copy of any verdict and final judgment providing for punitive damages under this section to the Chief Financial Officer by certified mail. The court is required to order the percentages of the punitive damages award, payable in equal divisions between the claimant and the Elder Victims Trust Fund.
- If a settlement agreement is entered into between the parties to the action after a jury verdict awarding punitive damages in an action brought under this section has been returned, the parties must provide for an equal share of the punitive damages payable to the Elder Victims Trust Fund and the claimant.
- The Department of Revenue is required to collect all punitive damages payable to the Elder Victims Trust Fund. Punitive damages are to be deposited in the Elder Victims Trust Fund. If the full amount of punitive damages cannot be collected, the claimant and the other recipients designated under this provision are each entitled to equal shares of the punitive damages collected.

Section 6. Creates s. 410.705, F.S., requiring the Department of Elder Affairs to create statewide initiatives to educate the public, including the elderly, law enforcement, judiciary, and social service professionals of deceptive and unfair acts against the elderly. These groups must be informed of the provisions of this chapter, and other statutory provisions related to elder exploitation, and of the rights and remedies available to elderly individuals. This section clarifies that these rights and remedies supplement those already in existence, except that punitive damages are recoverable only under this legislation or alternatively under ch. 772, F.S.

This section provides that lack of knowledge of an elderly person's age is not a defense. Any waiver by an elderly person of these rights is unenforceable and void.

Section 7. Provides that this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of s. 18, Art. VII, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of s. 24(a) and (b), Art. I of the Florida Constitution.

C. Trust Funds Restrictions:

The elder victims trust fund may be created with the passage of SB 2090 by a three-fifths vote of the members of both houses of the Legislature.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Adults defined as elderly persons would benefit under the provisions of the bill because they could assert a cause of action against a financial institution and recover damages in financial exploitation actions.

Financial institutions, including insurance companies and banks, that engage in financial exploitation can be sued by elderly persons and the Attorney General under the bill's provisions. Declaratory judgments or injunctions can be brought as well. Specified punitive damages, capped at \$1 million, can be sought as well as attorney's fees and costs by the successful plaintiff.

Financial institutions could likely be very circumspect in dealing with elderly persons (defined as adults over 60 years of age) for fear that innocent transactions could subject them to financial liability. For example, conceivably a legitimate communication by a bank representative with an elderly person that a financial decision may result in the suffering of a financial loss may be considered "intimidation" or "unfair" and subject the bank to liability.

C. Government Sector Impact:

The bill requires the Department of Elderly Affairs to create statewide initiatives to educate the public, including the elderly, law enforcement, judiciary, and social service professionals of deceptive and unfair acts against the elderly. The bill does not clearly specify that the Elder Victims Trust Fund created in SB 2090 will be used to fund these initiatives and there is no way to estimate the amount of funds that will be deposited in the Elder Victims Trust Fund to be appropriated to the department for implementing these initiatives.

The new civil causes of action proposed under this bill should result in additional revenue generating to the state, due to an increase in filing fees. Under ch. 2003-402, L.O.F., filing fee revenue is directed to the General Revenue Fund, the Clerk of Courts Operations Conference, the Court Education Trust Fund, and the Clerks of Court Trust Fund, effective July 1, 2004.

The bill also provides that half of punitive damage awards, as well as litigation costs and attorney's fee awards received by the Attorney General, shall be deposited into the Elder Victims Trust Fund.

Given the state's large elderly population, this bill potentially has a notable fiscal impact on judicial workload, particularly related to expedited circuit proceedings. This bill may increase due process costs for the state. Under ch. 2003-402, L.O.F., certain due process

services that are being transferred from the counties to the state including costs for conflict counsel, court reporting, interpreting, auxiliary aids or services, and expert witness fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 4 of the bill specifies that a guardian, family member, person, or organization acting on behalf of the elderly person with certain consent, or the personal representative, executor, or trustee is granted standing to sue if an elderly person is deceased. It is uncertain who will have priority standing to sue in the event of an elderly person's death.

VIII. Amendments:

#1 by Health, Aging, and Long-Term Care:

Deletes the word "unconscionable" from the definitions section of the bill.

#2 by Health, Aging, and Long-Term Care:

Clarifies that funds from the Elder Victims Trust Fund can be used to pay for the education initiatives that the Department of Elder Affairs must implement under the bill.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2092

Amendment No. 1



515142

CHAMBER ACTION

Senate

House

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The Committee on Health, Aging, and Long-Term Care recommended
the following amendment:

Senate Amendment

On page 4, lines 1-23, delete those lines.

Bill No. CS for SB 2092Amendment No. 2

704944

CHAMBER ACTION

SenateHouse.
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The Committee on Health, Aging, and Long-Term Care recommended
the following amendment:

Senate Amendment

On page 8, line 3, delete that line

and insert: (1) To the extent that funds are available in the
Elder Victims Trust Fund, the department shall develop and
implement

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

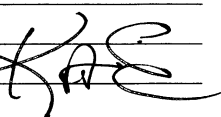

BILL: SB 2090

SPONSOR: Senators Villalobos and Smith

SUBJECT: Elder Victims Trust Fund

DATE: April 19, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Lang	JU	Fav/1 amendment
2.	Parham	Wilson	HC	Fav/1 amendment
3.	Emrich 	Deffenbaugh 	BI	
4.			ACJ	
5.			AP	
6.				

I. Summary:

Senate Bill 2090 creates the Elder Victims Trust Fund within the Department of Elderly Affairs (DOEA). Funds will be used to investigate and prosecute financial exploitation against elderly persons. Funds will also be used to finance education initiatives directed toward elderly persons, law enforcement, the judicial system, social service professionals, and the public, as to the issue of financial exploitation of elderly persons. The trust fund will be terminated on July 1, 2008, and must be reviewed before that date.

The bill creates section 410.706 of the Florida Statutes.

II. Present Situation:

Creation and Operation of Trust Funds

A trust fund consists of moneys received by the state which, under law or under trust agreement, are segregated for a purpose authorized by law.¹ Section 19(f), Art. III of the State Constitution governs the creation of trust funds. This constitutional provision prohibits the creation by law of a trust fund of the state or other public body without a three-fifths vote of the membership of each house of the Legislature.² This provision further specifies that a trust fund must be created in a separate bill for that purpose only. The Florida Supreme Court has interpreted this provision to encompass the inclusion of issues relating to the trust fund's purpose, administration and funding, as well as language addressing its regulation and solvency [*Americans Bankers Insurance Company v. Chiles*, 675 So.2d 922 (Fla. 1996)]. The First District Court of Appeal construed the three-fifths vote as requiring heightened scrutiny of the bill by the Legislature

¹ s. 215.32(2)(b)1., F.S.

² s. 19(f)(1), Art. III of the State Constitution.

[*Service Insurance Company v. Chiles*, 660 So.2d 734 (Fla. 1st DCA 1995)]. In addition, the Legislature has established criteria governing the establishment of trust funds. Under these criteria, a law creating a trust fund must, at a minimum, specify:

- The name of the trust fund;
- The agency or branch of state government responsible for administering the trust fund;
- The requirements or purposes that the trust fund is established to meet; and,
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.³

The Chief Financial Officer is directed to invest all of the trust funds and all of the agency funds of each state agency.⁴ Under current law, any balance of an appropriation for any given fiscal year that remains after lawful expenditures have been charged against it reverts to the fund from which the Legislature appropriated it and shall be available for re-appropriation.⁵ Any reversion of appropriations provided from the General Revenue Fund must be transferred to the General Revenue Fund within 15 days after the reversion, unless otherwise provided by federal or state law, including the General Appropriations Act.⁶

Termination of Trust Funds

Section 19(f)(2), Art. III of the State Constitution, specifies that trust funds created after November 4, 1992, with certain exceptions, shall terminate not more than 4 years after the effective date of the act authorizing the creation of the trust fund, unless the Legislature by law sets a shorter time period. Accordingly, a bill that creates a trust fund should specify the trust fund's date of termination, or, if the trust fund is exempt from the automatic 4-year termination requirement, the bill should declare that the trust fund is exempt from this requirement.⁷

The Legislature established a schedule and process for reviewing trust funds.⁸ Before the regular session of the Legislature and immediately prior to the scheduled termination date of an executive branch trust fund (or an earlier date if specified by the Legislature), the agency responsible for administration of the trust fund and the Governor must recommend to the Legislature whether the trust fund should terminate or be re-created.⁹ Each recommendation is based on a review of the trust fund's purpose, use, and necessity. A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.

If the trust fund is terminated and not immediately re-created, all cash balances and income of the trust fund are deposited into the General Revenue Fund.¹⁰ The Department of Elderly Affairs (DOEA) must pay any outstanding debts of the trust fund as soon as practicable, and the Chief

³ s. 215.3207, F.S.

⁴ s. 17.61, F.S.

⁵ s. 216.301(1)(b), F.S.

⁶ s. 216.301(1)(c), F.S.

⁷ See Florida Senate, *Manual for Drafting General Bills* 82 (Sept. 1999).

⁸ s. 215.3206 and s. 15.3208, F.S.

⁹ s. 215.3206(1), F.S.

¹⁰ s. 215.3206(2), F.S.

Financial Officer closes out and removes the trust fund from the various state accounting systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities.

Department of Elderly Affairs

The Florida Department of Elderly Affairs is the agency on aging, operating a number of state and federally funded programs for the elderly. DOEA has rule-making authority for adult day care, Alzheimer's disease training for nursing homes, assisted living facilities, adult family care homes, and hospice programs; and operates the Medicaid Aged/Disabled waiver, the Medicaid Assisted Living for the Elderly waiver and the Comprehensive Assessment and Review for Long-Term Care Services (CARES) nursing home preadmission screening program, under an inter-agency agreement with AHCA. DOEA operates the state-funded Home Care for the Elderly, Community Care for the Elderly, and Alzheimer's Disease Initiative programs. DOEA also administers on behalf of AHCA, the Program of All Inclusive Care for the Elderly and the Nursing Home Diversion Program waiver. DOEA runs the Long-Term Care Ombudsman Program for nursing homes, assisted living facilities, and adult family care homes. DOEA also has oversight of the Statewide Public Guardianship Office and runs volunteer and caregiver support programs.

III. Effect of Proposed Changes:

Section 1. Creates the Elder Victims Trust Fund in Department of Elderly Affairs (DOEA). Funds credited to the trust fund will be used to investigate and prosecute financial exploitation against elderly persons, and for education initiatives targeting elderly persons, law enforcement, the judiciary, social service professionals and the general public.

The bill also requires that balances in the trust fund at the end of each fiscal year shall remain in the fund and be available for carrying out the purposes of the fund, precluding appropriations from the General Revenue Fund or other sources from reverting if the appropriations are not used during the fiscal year for which they were provided.

The bill provides that, pursuant to s.19(f)(2) of Art. III of the State Constitution, the Elder Victims Trust Fund will be terminated on July 1, 2008. Before it is terminated, it must be reviewed in accordance with s. 215.3206(1) and (2), F.S.

Section 2. Provides that it shall take effect July 1, 2004, if a companion substantive bill is adopted in the same session or subsequent special session and becomes law.

The linked substantive bill, SB 2092, (see amendment # 1, below) provides for a cause of action for any adult over the age of 60 against a person who engages in financial exploitation of that adult. If the elderly person prevails in their civil action, he or she is entitled to recover reasonable attorney's fees and costs, and punitive damages. Punitive damages are capped at \$1 million, and half of the award shall be deposited into the Elder Victims Trust Fund. These funds shall then be used to educate the elderly, law enforcement and others about financial exploitation of the elderly. This bill also allows the Attorney General to bring a cause of action against a person that

has engaged in the financial exploitation of the elderly and provides criminal penalties similar to those found in current law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of s. 18, Art VII of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of s. 24(a) and (b) Art. I of the Florida Constitution.

C. Trust Funds Restrictions:

This bill creates the Elder Victims Trust Fund to be administered by DOEA. This bill appears to comply with s. 19(f), Art. III of the State Constitution, relating to the creation and termination of trust funds. The bill will require a three-fifths vote of the membership of each house of the Legislature in order for the Trust Fund to be created.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill creates an Elder Victims Trust Fund within DOEA, but does not provide appropriations for the trust fund. However, SB 2092, the companion bill, specifies how the Trust Fund is to be funded. In a successful action brought by the Attorney General, the costs of the action, together with reasonable attorney's fees, are to be awarded to the Attorney General and deposited in the Elder Victims Trust Fund. Any punitive damages awarded under SB 2092 are to be divided equally between the claimant and the Elder Victims Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill specifies that the trust fund will be created within the Department of Elderly Affairs.

Funds will be used to investigate and prosecute financial exploitation against elderly persons. The Department of Legal Affairs under the Office of the Attorney General will be responsible for investigation and prosecution efforts. Also, in SB 2092, the companion bill, the Attorney General is required to investigate and file civil actions in cases of financial exploitation against an elderly person. Funding for the Elder Victims Trust Fund includes one-half of all punitive damages awarded and moneys received by the Attorney General for attorney's fees and costs of investigation or litigation under this authority. The Attorney General's Office may be the more appropriate placement for the Elder Victims Trust Fund.

The bill authorizes any balance in the Elder Victims Trust Fund at the end of the fiscal year to remain within the fund, rather than revert back to the General Revenue Fund. The bill cites s. 216.351, F.S., which provides that subsequent inconsistent laws shall supersede this chapter "only to the extent that they do so by express reference to this section" in support of this provision. This appears to be an exception to s. 216.301, F.S., which requires that all unexpended funds revert back at the end of the fiscal year to the fund from which they were appropriated, so that the Legislature retains control over the unspent balances and decides whether the need exists to re-appropriate the funds.

VIII. Amendments:

#1 by Judiciary:

Technical; inserts the bill number (SB 2092) of the linked bill.

#2 by Health, Aging, and Long-Term Care:

Places the Elder Victims Trust Fund in the Office of the Attorney General rather than in the Department of Elder Affairs and clarifies that funds from the Trust Fund may be used for the education initiatives that the Department of Elder Affairs must implement under the companion bill, SB 2092.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 2090

Amendment No. 1



405138

CHAMBER ACTION

Senate

House

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The Committee on Judiciary recommended the following amendment:

Senate Amendment

On page 2, line 4, after "Bill"

and insert: 2092

Bill No. SB 2090

Amendment No. 2



280082

CHAMBER ACTION

Senate

House

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The Committee on Health, Aging, and Long-Term Care recommended the following amendment:

Senate Amendment

On page 1, lines 16-20, delete those lines

and insert: (1) There is created the Elder Victims Trust Fund within the Office of the Attorney General. Funds shall be credited to the trust fund as provided by law to be used for the investigation and prosecution of financial exploitation against elderly persons and for education initiatives under s. 410.705(1), F.S., directed

Summary of Draft Amendments to CS/CS/CS/SB 2910
(Recommended by Brian Deffenbaugh, BI Com.)

Amend. 952426 (p. 52, lines 16-18) -- Technical. Changes the section number of a newly created statute to place it in chapter 624, which relates to individual health insurance policies.

Amend. 363806 (p. 56, lines 3-4) -- Changes the definition of “implementation” of the Florida Health Insurance Plan to mean the date when legal authority and administrative ability exists for the board to subsume the powers of the Florida Comprehensive Health Association. (The bill repeals the FCHA statutes upon “implementation” of the FHIP and the bill currently defines implementation as the appointment of the FHIP board.)

Amend. 275820 (p. 57, line 6-8) -- Deletes from the definition of “resident” for purposes of the Florida Health Insurance Plan, the provisions that HIPAA-eligible individuals do not have to meet the 6-month residency requirement. because the bill no longer makes HIPAA-eligible individuals automatically eligible for the Plan.

Amend. 891384 (p. 57, line 21 thru page 58, line 4) -- Specifies the initial terms of office of each of the board members of the Florida Health Insurance Plan and makes the Director of the Office of Insurance Regulation (who is the chair) responsible for any organizational requirements for the initial board meeting.

Amend. 101360 (p. 58, line 28) -- Clarifies that the board of the FHIP may take action to administer coverage of individuals enrolled in the Florida Comprehensive Health Association, prior to funds being appropriated (since the Board will subsume the powers and duties of the FCHA, including current funding for the FCHA).

Amend. 212768 (p. 61, btw. lines 24 and 25) -- Clarifies that the board of the FHIP subsumes the statutory powers of the Florida Comprehensive Health Association.

Amend. 622930 (p. 62, btw. lines 6 & 7) -- Requires the actuarial study done for the FHIP to determine the effect on the individual and small group market by including HIPAA-eligible individual in the FHIP.

Amend. 931790 (p. 68, lines 4-5) -- Deletes a reference to HIPAA-eligible individuals in the premium limits for the FHIP, because the bill no longer makes HIPAA-eligible individuals automatically eligible for the Plan.

Amend. 753804 (p. 70, line 20) -- Clarifies that upon implementation of the Florida Health Insurance Plan, the Florida Comprehensive Health Association is abolished and all individuals actively enrolled in the FCHA shall be enrolled in the FHIP, and will convert to the plan benefits by January 1, 2005.

Amend. 240800 (p. 75, lines 8-9) -- Requires small employer carriers to offer a high deductible plan that meets the federal requirements of a health reimbursement arrangement, as well as a health savings account plan.

Amend. 070826 (p. 83, lines 17-27) -- Requires the high deductible plan offered by small group carriers for health reimbursement arrangements, as well as health savings accounts, to meet the minimum benefits of this section.

Amend. 372270 (p. 100, line 11 thru p. 101, line 26) -- Adds terms that would be prohibited in the marketing material for discount medical plans and clarifies language relating to plan charges.

Amend. 780720 (p. 102, lines 25-27) -- Limits prior approval of rates by the Office of Insurance Regulation for discount medical plans to those plans with fees of more than \$30 a month or \$360 a year.

Amend. 513154 (p. 107, lines 7-12) -- Deletes the requirement that marketers of discount medical plans be licensed and appointed insurance agents, but requires plans to be responsible and financially liable for actions not complying with their contract or the provisions of law.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: Senate Bill 2122

SPONSOR: Senator Atwater

SUBJECT: Public Records Exemption/Self-Insurers

DATE: April 19, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson <i>A</i>	Deffenbaugh <i>BP</i>	BI	
2.				
3.				
4.				
5.				
6.				

I. Summary:

On January 1, 1994, the Legislature created the Florida Self-Insurers Guaranty Association, Incorporated (Association), as a nonprofit corporation. In the event a self-insured employer becomes insolvent, the Association assumes responsibility for administering and paying workers' compensation claims of the employer. Generally, most self-insured employers are required to join the Association and meet certain financial requirements.

Senate Bill 2122 creates a public record exemption claims files and minutes of portions of meetings of the Florida Self-Insurers Guaranty Association until termination of all litigation and settlement of all claims arising out of the same accident. The public records exemption for those claims files and minutes of closed meetings terminates when litigation involving the claim ends or when all claims involving the workers' compensation accident are settled.

The bill provides statements of public necessity and provides for future review and repeal of the public records exemption.

This bill creates section 624.465 of the Florida Statutes.

II. Present Situation:

Public Records; Exemptions

Section 24(a), Art. I of the State Constitution, provides that *"Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution."*

Section 24(c), Art. I of the State Constitution permits the Legislature to create exemptions from a public records law. However, the bill must contain a statement of public necessity that justifies the exemption and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that were created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Section 119.05(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption that exemption shall repeal on October 2 of the 5th year, unless the Legislature acts to reenact the exemption.

Florida Self-Insurers Guaranty Association

The Legislature created the Florida Self-Insurers Guaranty Association, Incorporated (Association) effective January 1, 1994.¹ All self-insured employers, except for public utilities and governmental entities, are required to join the Association and meet certain financial requirements as a condition of their authority to self-insure.² The Association exercises its powers and duties through a board of directors.³ The board consists of nine members that are appointed by the Department of Financial Services based upon recommendations of members of the Association. In the event a self-insured employer becomes insolvent, the Association assumes responsibility for administering workers' compensation claims of the self-insured employer and paying an employer's claims.

¹ Section 440.385, F.S. (2003)

² Section 440.385(1)(a), F.S. (2003)

³ Section 440.385(1)(a), F.S. (2003)

III. Effect of Proposed Changes:

Section 1 provides that the following records held by the Florida Self-Insurers Guaranty Association (Association) are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution exempt:

- Workers' compensation claims files of the Association until the termination of all litigation and settlement of all claims arising out of the same workers' compensation accident.
- Minutes of those portions of meetings of the Association or a subcommittee of the Association at which a record that is confidential and exempt claim file by this section is discussed as provided in this section until termination of all litigation and settlement of all claims with regard to that claim.

The bill allows the Association to be released to another agency in the performance of that agency's official duties and responsibilities. The governmental agency receiving such record must maintain the confidentiality and exempt status of the claim file it receives.

Meetings or portions of meetings of the board of directors of the Association wherein confidential and exempt information is discussed are closed to public access. Additionally, the bill requires all portions of the meeting to be recorded and transcribed. The court reporter's notes of any closed meeting must be retained by the Association for a minimum of 5 years. After settlement of a claim and termination of litigation, a copy of the transcript with any exempt and confidential information redacted of any closed meeting wherein claims were discussed must be made public as to individual claims after the settlement of the claim.

Section 2 provides for future review and repeal of the exemptions on October 2, 2009.

Section 3 provides that it is necessary to make such records and meetings confidential and exempt to prevent the disclosure of detailed medical records and personal information of a claimant. The bill also provides that the disclosure of information contained in a claim file prior to the termination of all litigation and settlement of all claims arising out of the same accident is necessary to avoid compromising the Association's litigation of the claim.

Section 4 provides that the bill becomes effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates a public records exemption for claim files and portions of meetings of the Florida Self-Insurers Guaranty Association, Incorporated wherein such claims files are discussed until the termination of all litigation and settlement of the claim. Section 24(c),

Art. I of the State Constitution requires a two-thirds vote of the members for passage of a newly created public records or public meetings exemption.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This public records exemption would prevent the disclosure of health-related information and personal identifying information of a claimant from being disclosed until the settlement of litigation by the Florida Self-Insurers Guaranty Association, Incorporated (Association).

C. Government Sector Impact:

This public records exemption would assist the Association during the litigation of a claim since the release of such information could jeopardize or compromise pending litigation.

VI. Technical Deficiencies:

Statutory provisions relating to the Florida Self-Insurers Guaranty Association, Incorporated are found in ch. 440, F.S.; however, the bill creates the public records and meeting exemptions in ch. 624, F.S.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 2122

Amendment No. _____



675258

CHAMBER ACTION

SenateHouse.
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.**BANKING AND INSURANCE****DATE:** 4/19/04**TIME:** 1:07 pm

Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 440.3851, Florida Statutes, is
created to read:440.3851 Public records and meeting exceptions.--(1) The following records held by the Florida
Self-Insurers Guaranty Association authorized and created in
s. 440.385, are confidential and exempt from the provisions of
s. 119.07(1) and s. 24(a), Art. I of the State Constitution:(a) Claims files, until termination of all litigation
and settlement of all claims arising out of the same incident.(b) Medical records that are part of a claims file.(c) Personal identifying information in records that
are part of a claims file.(d) Minutes of those portions of meetings at which a
record that is made confidential and exempt by this section is
discussed as provided in subsection (3), until termination of

Bill No. SB 2122Amendment No. 

675258

1 all litigation and settlement of all claims with regard to
2 that claim.

3 (2) Records or portions of records made confidential
4 and exempt by this section may be released, upon written
5 request, to another agency in the performance of that agency's
6 official duties and responsibilities. The receiving agency
7 shall maintain the confidential and exempt status of such
8 record or portion of record made confidential and exempt by
9 this section.

10 (3) That portion of a meeting of the association board
11 of directors or a subcommittee of the association board of
12 directors at which records made confidential and exempt by
13 this section are discussed are exempt from the provisions of
14 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
15 portions of meetings which are closed to the public shall be
16 recorded and transcribed. The board shall record the times of
17 commencement and termination of the meeting, all discussion
18 and proceedings, the names of all persons present at any time,
19 and the names of all persons speaking. No portion of any
20 closed meeting shall be off the record. Subject to this
21 subsection and s. 119.07(2)(a), the court reporter's notes of
22 any closed meeting shall be retained by the corporation for a
23 minimum of 5 years. A copy of the transcript of any closed
24 meeting wherein claims are discussed shall become public as to
25 individual claims after settlement of the claim with any
26 exempt and confidential information redacted.

27 Section 2. Section 440.3851, Florida Statutes, is
28 subject to the Open Government Sunset Review Act of 1995 in
29 accordance with section 119.15, Florida Statutes, and shall
30 stand repealed on October 2, 2009, unless reviewed and saved
31 from repeal through reenactment by the Legislature.

Bill No. SB 2122

Amendment No. _____



675258

1 Section 3. (1) The Legislature finds that it is a
2 public necessity that claims files of the Florida
3 Self-Insurers Guaranty Association, Incorporated, be held
4 confidential and exempt from public disclosure and that
5 portions of meetings of the board of directors of the
6 association, or meetings of any subcommittee of the board,
7 wherein these claims files are reviewed and evaluated be
8 closed. The Legislature finds that the association was created
9 to stand in the place of private businesses that are self
10 insured for workers' compensation claims if any of such
11 businesses becomes insolvent. The Legislature finds that the
12 exemption of the open compensation files of the association is
13 necessary for the effective and efficient administration of a
14 government program created to insure workers with claims
15 against insolvent businesses which can otherwise seek
16 compensation from the funds collected by the association from
17 its member businesses. Claims files are created by the
18 association after a claim against one of its insolvent members
19 is made, contain detailed information about the claim, medical
20 information, and other personal identifying information about
21 the claimant, and also contain information detailing the
22 evaluation of the legitimacy of the claim, the extent of
23 incapacity and a valuation of the award, if any, that should
24 be made. Information in a claim file held by the association
25 includes the medical records of a claimant. The Legislature
26 finds that the claimants' medical records are personal and
27 sensitive. Therefore, the Legislature finds that an exemption
28 for medical records and personal identifying information of a
29 claimant is a public necessity in order to protect a
30 claimant's health-related information. Matters of personal
31 health are traditionally a private and confidential concern.

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Amendment No. _____



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1 The release of the medical records of a claimant or personal
2 identifying information of a claimant would be defamatory to
3 the individuals or could cause unwarranted damage to the name
4 or reputation of the individuals. When a claim is contested,
5 the work product of legal counsel may also be included in the
6 file in the form of direction to claims professionals or other
7 attorney-client privileged communications. Allowing the
8 claimant or their lawyer's access to the files, which could be
9 used for purposes of negotiation, claim evaluation, and
10 settlement considerations, would weaken the legal position of
11 the association and could result in higher awards and
12 settlements paid out by the guaranty fund and ultimately the
13 membership of the association. Additionally, information in
14 claims files that reasonably encompass privileged
15 attorney-client communications should be held confidential and
16 exempt because the release of such information could
17 jeopardize ongoing or pending litigation. The Legislature
18 further finds that the exempt records contain confidential
19 medical information of a personal, sensitive nature about the
20 claimant.

21 (2) The Legislature further finds that closing access
22 to meetings of the board of directors of the association or
23 meetings of a subcommittee of the board, wherein claims files
24 are reviewed and evaluated, is necessary for the effective and
25 efficient administration of the claims evaluation work of the
26 association. The directors of the fund act in a trustee
27 capacity and must take care that the assets of the fund are
28 managed wisely. Their efforts to meet as a collegial body to
29 closely review individual files in an open and frank setting
30 that includes staff are thwarted by the current requirement
31 that such meetings be noticed and open. Furthermore,

Bill No. SB 2122

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675258

1 discussion of individual files in an open and public setting
2 might reveal private, sensitive medical information that is
3 otherwise confidential.

4 Section 4. This act shall take effect upon becoming a
5 law.

6
7
8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 Delete everything before the enacting clause

11
12 and insert:

13 A bill to be entitled

14 An act relating to public records and meetings
15 exemptions; creating s. 440.3851 F.S.;
16 exempting from public records and public
17 meetings requirements certain records of the
18 Florida Self-Insurers Guaranty Association,
19 Incorporated, and meetings of the board of
20 directors of the association; providing for
21 future legislative review and repeal; providing
22 findings of public necessity; providing an
23 effective date.



Senate Committee On
BANKING AND INSURANCE
Additional Amendments filed
Before the 2-hour deadline

Bill Posey, Chair
Gwen Margolis, Vice Chair

Meeting Packet

Tuesday, April 20, 2004

1:15 a.m. – 3:15 a.m.

Room 110, Senate Office Building

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

Bill No. CS for SB 520 & CS for SB 494

Amendment No. _____



062548

3

CHAMBER ACTION

SenateHouse.
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Consideration of
this amendment
requires a 2/3 vote
of members present

BANKING AND INSURANCEDATE: 4/20/04TIME: 8:00 am

Senator Posey moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (3) of section 553.73, Florida Statutes, is amended to read:

553.37 Rules; inspections; and insignia.--

(3) All manufactured buildings issued and bearing insignia of approval pursuant to subsection (2) shall be deemed to comply with the Florida Building Code and are exempt from local amendments enacted by any local government. Lawn storage buildings and storage sheds bearing the insignia of approval of the department may be delivered and installed without need of a contractor's or specialty license.

Section 2. Paragraphs (a) and (c) of subsection (4), subsection (6), and paragraphs (a) and (c) of subsection (7) of section 553.73, Florida Statutes, are amended to read:

553.73 Florida Building Code.--

(4) (a) All entities authorized to enforce the Florida

Bill No. CS for SB 520 & CS for SB 494

Amendment No. _____



062548

1 Building Code pursuant to s. 553.80 shall comply with
2 applicable standards for issuance of mandatory certificates of
3 occupancy, minimum types of inspections, and procedures for
4 plans review and inspections as established by the commission
5 by rule. Notwithstanding any other provision of law, a local
6 government may issue an annual permit for construction
7 activity of the type and pursuant to the conditions
8 established within the Florida Building Code. Local
9 governments may adopt amendments to the administrative
10 provisions of the Florida Building Code, subject to the
11 limitations of this paragraph. Local amendments shall be more
12 stringent than the minimum standards described herein and
13 shall be transmitted to the commission within 30 days after
14 enactment. The local government shall make such amendments
15 available to the general public in a usable format. The State
16 Fire Marshal is responsible for establishing the standards and
17 procedures required in this paragraph for governmental
18 entities with respect to applying the Florida Fire Prevention
19 Code and the Life Safety Code.

20 (c) Any amendment adopted by a local enforcing agency
21 pursuant to this subsection shall not apply to state or school
22 district owned buildings, manufactured buildings or
23 factory-built school buildings approved by the commission, or
24 prototype buildings approved pursuant to s. 553.77(3)(5). The
25 respective responsible entities shall consider the physical
26 performance parameters substantiating such amendments when
27 designing, specifying, and constructing such exempt buildings.

28 (6)(a) The commission, by rule adopted pursuant to ss.
29 120.536(1) and 120.54, shall update the Florida Building Code
30 every 3 years. When updating the Florida Building Code, the
31 commission shall consider changes made by the adopting entity

Bill No. CS for SB 520 & CS for SB 494

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1 of any selected model code for any model code incorporated
2 into the Florida Building Code, and may subsequently adopt the
3 new edition or successor of the model code or any part of such
4 code, no sooner than 6 months after such model code has been
5 adopted by the adopting organization, which may then be
6 modified for this state as provided in this section. ~~7-and~~

7 (b) The commission shall further consider the
8 commission's own interpretations, declaratory statements,
9 appellate decisions, and approved statewide and local
10 technical amendments and shall incorporate such
11 interpretations, statements, decisions, and amendments into
12 the updated Florida Building Code only to the extent that they
13 are necessary to modify the foundation code to accommodate the
14 specific needs of this state. A change made by an institute or
15 standards organization to any standard or criterion that is
16 adopted by reference in the Florida Building Code does not
17 become effective statewide until it has been adopted by the
18 commission. Furthermore, the edition of the Florida Building
19 Code which is in effect on the date of application for any
20 permit authorized by the code governs the permitted work for
21 the life of the permit and any extension granted to the
22 permit.

23 (c) A rule updating the Florida Building Code in
24 accordance with this paragraph shall become effective no
25 sooner than 6 months after completion of the rule adoption
26 process. Any amendment to the Florida Building Code which is
27 adopted upon a finding by the commission that the amendment is
28 necessary to protect the public from immediate threat of harm
29 takes effect immediately.

30 (7) (a) The commission may approve technical amendments
31 to the Florida Building Code once each year for statewide or

Bill No. CS for SB 520 & CS for SB 494

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1 regional application upon a finding that the amendment
2 conforms to the following:

3 1. Is necessary to provide for ~~Has-a-reasonable-and~~
4 ~~substantial-connection-with~~ the health, safety, and welfare of
5 the general public.

6 2. Strengthens or improves the Florida Building Code,
7 or in the case of innovation or new technology, will provide
8 equivalent or better products or methods or systems of
9 construction.

10 3. Does not discriminate against materials, products,
11 methods, or systems of construction of demonstrated
12 capabilities.

13 4. Does not degrade the effectiveness of the Florida
14 Building Code.

15
16 Furthermore, the Florida Building Commission may approve
17 technical amendments to the code once each year to incorporate
18 into the Florida Building Code its own interpretations of the
19 code which are embodied in its opinions, final orders, and
20 declaratory statements, and interpretations of hearing officer
21 panels under s. 553.775(3)(c). Amendments approved under this
22 paragraph shall be adopted by rule pursuant to ss. 120.536(1)
23 and 120.54, after the amendments have been subjected to the
24 provisions of subsection (3).

25 (c) The commission may not consider ~~approve~~ any
26 proposed amendment that does not accurately and completely
27 address all requirements for amendment which are set forth in
28 this section. The commission shall require all proposed
29 amendments and information submitted with proposed amendments
30 to be reviewed by commission staff prior to consideration by
31 any technical advisory committee. These reviews shall be for

Bill No. CS for SB 520 & CS for SB 494

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1 sufficiency only and are not intended to be qualitative in
2 nature. Proposed amendments without a fiscal impact statement
3 may not be considered by the commission or any technical
4 advisory committee.

5 Section 3. Section 553.77, Florida Statutes, is
6 amended to read:

7 553.77 Specific powers of the commission.--

8 (1) The commission shall:

9 (a) Adopt and update the Florida Building Code or
10 amendments thereto, pursuant to ss. 120.536(1) and 120.54.

11 (b) Make a continual study of the operation of the
12 Florida Building Code and other laws relating to the design,
13 construction, erection, alteration, modification, repair, or
14 demolition of public or private buildings, structures, and
15 facilities, including manufactured buildings, and code
16 enforcement, to ascertain their effect upon the cost of
17 building construction and determine the effectiveness of their
18 provisions. Upon updating the Florida Building Code every 3
19 years, the commission shall review existing provisions of law
20 and make recommendations to the Legislature for the next
21 regular session of the Legislature regarding provisions of law
22 that should be revised or repealed to ensure consistency with
23 the Florida Building Code at the point the update goes into
24 effect. State agencies and local jurisdictions shall provide
25 such information as requested by the commission for evaluation
26 of and recommendations for improving the effectiveness of the
27 system of building code laws for reporting to the Legislature
28 annually. Failure to comply with this or other requirements of
29 this act must be reported to the Legislature for further
30 action. Any proposed legislation providing for the revision or
31 repeal of existing laws and rules relating to technical

Bill No. CS for SB 520 & CS for SB 494

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1 requirements applicable to building structures or facilities
 2 should expressly state that such legislation is not intended
 3 to imply any repeal or sunset of existing general or special
 4 laws governing any special district that are not specifically
 5 identified in the legislation.

6 (c) Upon written application by any substantially
 7 affected person or a local enforcement agency, issue
 8 declaratory statements pursuant to s. 120.565 relating to new
 9 technologies, techniques, and materials which have been tested
 10 where necessary and found to meet the objectives of the
 11 Florida Building Code. This paragraph does not apply to the
 12 types of products, materials, devices, or methods of
 13 construction required to be approved under paragraph (f) ~~(i)~~.

14 ~~(d)--Upon-written-application-by-any-substantially~~
 15 ~~affected-person,-state-agency,-or-a-local-enforcement-agency,-~~
 16 ~~issue-declaratory-statements-pursuant-to-s.-120-565-relating~~
 17 ~~to-the-enforcement-or-administration-by-local-governments-of~~
 18 ~~the-Florida-Building-Code.-Paragraph-(h)-provides-the~~
 19 ~~exclusive-remedy-for-addressing-local-interpretations-of-the~~
 20 ~~code-~~

21 ~~(e)--When-requested-in-writing-by-any-substantially~~
 22 ~~affected-person,-state-agency,-or-a-local-enforcing-agency,-~~
 23 ~~shall-issue-declaratory-statements-pursuant-to-s.-120-565~~
 24 ~~relating-to-this-part-and-ss.-515-25,-515-27,-515-29,-and~~
 25 ~~515-37---Actions-of-the-commission-are-subject-to-judicial~~
 26 ~~review-pursuant-to-s.-120-68-~~

27 (d) ~~(f)~~ Make recommendations to, and provide assistance
 28 upon the request of, the Florida Commission on Human Relations
 29 regarding rules relating to accessibility for persons with
 30 disabilities.

31 (e) ~~(g)~~ Participate with the Florida Fire Code Advisory

Bill No. CS for SB 520 & CS for SB 494

Amendment No. _____



062548

1 Council created under s. 633.72, to provide assistance and
2 recommendations relating to firesafety code interpretations.
3 The administrative staff of the commission shall attend
4 meetings of the Florida Fire Code Advisory Council and
5 coordinate efforts to provide consistency between the Florida
6 Building Code and the Florida Fire Prevention Code and the
7 Life Safety Code.

8 ~~{h}--Hear-appeals-of-the-decisions-of-local-boards-of~~
9 ~~appeal-regarding-interpretation-decisions-of-local-building~~
10 ~~officials,-or-if-no-local-board-exists,-hear-appeals-of~~
11 ~~decisions-of-the-building-officials-regarding-interpretations~~
12 ~~of-the-code---For-such-appeals-~~

13 ~~1:--Local-decisions-declaring-structures-to-be-unsafe~~
14 ~~and-subject-to-repair-or-demolition-shall-not-be-appealable-to~~
15 ~~the-commission-if-the-local-governing-body-finds-there-is-an~~
16 ~~immediate-danger-to-the-health-and-safety-of-its-citizens-~~

17 ~~2:--All-appeals-shall-be-heard-in-the-county-of-the~~
18 ~~jurisdiction-defending-the-appeal-~~

19 ~~3:--Hearings-shall-be-conducted-pursuant-to-chapter-120~~
20 ~~and-the-uniform-rules-of-procedure,-and-decisions-of-the~~
21 ~~commission-are-subject-to-judicial-review-pursuant-to-s-~~
22 ~~120-68-~~

23 (f){i} Determine the types of products which may be
24 approved by the commission requiring-approval for local-or
25 statewide use and shall provide for the evaluation and
26 approval of such products, materials, devices, and method of
27 construction for statewide use. The commission may prescribe
28 by rule a schedule of reasonable fees to provide for
29 evaluation and approval of products, materials, devices, and
30 methods of construction. Evaluation and approval shall be by
31 action of the commission or delegated pursuant to s. 553.842.

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1 This paragraph does not apply to products approved by the
2 State Fire Marshal.

3 (g)~~(j)~~ Appoint experts, consultants, technical
4 advisers, and advisory committees for assistance and
5 recommendations relating to the major areas addressed in the
6 Florida Building Code.

7 (h)~~(k)~~ Establish and maintain a mutual aid program,
8 organized through the department, to provide an efficient
9 supply of various levels of code enforcement personnel, design
10 professionals, commercial property owners, and construction
11 industry individuals, to assist in the rebuilding effort in an
12 area which has been hit with disaster. The program shall
13 include provisions for:

14 1. Minimum postdisaster structural, electrical, and
15 plumbing inspections and procedures.

16 2. Emergency permitting and inspection procedures.

17 3. Establishing contact with emergency management
18 personnel and other state and federal agencies.

19 (i)~~(l)~~ Maintain a list of interested parties for
20 noticing rulemaking workshops and hearings, disseminating
21 information on code adoption, revisions, amendments, and all
22 other such actions which are the responsibility of the
23 commission.

24 (j)~~(m)~~ Coordinate with the state and local
25 governments, industry, and other affected stakeholders in the
26 examination of legislative provisions and make recommendations
27 to fulfill the responsibility to develop a consistent, single
28 code.

29 (k)~~(n)~~ Provide technical assistance to local building
30 departments in order to implement policies, procedures, and
31 practices which would produce the most cost-effective property

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1 insurance ratings.

2 (1)~~(e)~~ Develop recommendations for local governments
3 to use when pursuing partial or full privatization of building
4 department functions. The recommendations shall include, but
5 not be limited to, provisions relating to equivalency of
6 service, conflict of interest, requirements for competency,
7 liability, insurance, and long-term accountability.

8 ~~(2)--Upon-written-application-by-any-substantially~~
9 ~~affected-person,-the-commission-shall-issue-a-declaratory~~
10 ~~statement-pursuant-to-s-120-565-relating-to-a-state-agency's~~
11 ~~interpretation-and-enforcement-of-the-specific-provisions-of~~
12 ~~the-Florida-Building-Code-the-agency-is-authorized-to-enforce-~~
13 ~~The-provisions-of-this-subsection-shall-not-be-construed-to~~
14 ~~provide-any-powers,-other-than-advisory,-to-the-commission~~
15 ~~with-respect-to-any-decision-of-the-State-Fire-Marshall-made~~
16 ~~pursuant-to-the-provisions-of-chapter-633-~~

17 ~~(3)--The-commission-may-designate-a-commission-member~~
18 ~~with-demonstrated-expertise-in-interpreting-building-plans-to~~
19 ~~attend-each-meeting-of-the-advisory-council-created-in-s-~~
20 ~~553-512---The-commission-member-may-vary-from-meeting-to~~
21 ~~meeting,-shall-serve-on-the-council-in-a-nonvoting-capacity,-~~
22 ~~and-shall-receive-per-diem-and-expenses-as-provided-in-s-~~
23 ~~553-74(3)-~~

24 (2)~~(4)~~ For educational and public information
25 purposes, the commission shall develop and publish an
26 informational and explanatory document which contains
27 descriptions of the roles and responsibilities of the licensed
28 design professional, residential designer, contractor, and
29 local building and fire code officials. The State Fire Marshal
30 shall be responsible for developing and specifying roles and
31 responsibilities for fire code officials. Such document may

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1 also contain descriptions of roles and responsibilities of
2 other participants involved in the building codes system.

3 (3)(5) The commission may provide by rule for plans
4 review and approval of prototype buildings owned by public and
5 private entities to be replicated throughout the state. The
6 rule must allow for review and approval of plans for prototype
7 buildings to be performed by a public or private entity with
8 oversight by the commission. The department may charge
9 reasonable fees to cover the administrative costs of the
10 program. Such approved plans or prototype buildings shall be
11 exempt from further review required by s. 553.79(2), except
12 changes to the prototype design, site plans, and other
13 site-related items. As provided in s. 553.73, prototype
14 buildings are exempt from any locally adopted amendment to any
15 part of the Florida Building Code. Construction or erection of
16 such prototype buildings is subject to local permitting and
17 inspections pursuant to this part.

18 (4)(6) The commission may produce and distribute a
19 commentary document to accompany the Florida Building Code.
20 The commentary must be limited in effect to providing
21 technical assistance and must not have the effect of binding
22 interpretations of the code document itself.

23 ~~(7)--The commission shall by rule establish an informal~~
24 ~~process of rendering nonbinding interpretations of the Florida~~
25 ~~Building Code.--The commission is specifically authorized to~~
26 ~~refer interpretive issues to organizations that represent~~
27 ~~those engaged in the construction industry.--The commission is~~
28 ~~directed to immediately implement the process prior to the~~
29 ~~completion of formal rulemaking.--It is the intent of the~~
30 ~~legislature that the commission create a process to refer~~
31 ~~questions to a small, rotating group of individuals licensed~~

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1 under-part-XII-of-chapter-468,-to-which-a-party-can-pose
2 questions-regarding-the-interpretation-of-code-provisions---It
3 is-the-intent-of-the-legislature-that-the-process-provide-for
4 the-expeditious-resolution-of-the-issues-presented-and
5 publication-of-the-resulting-interpretation-on-the-Building
6 Code-Information-System.--Such-interpretations-are-to-be
7 advisory-only-and-nonbinding-on-the-parties-or-the-commission:-

8 Section 4. Section 553.775, Florida Statutes, is
9 created to read:

10 553.775 Interpretations.--

11 (1) It is the intent of the Legislature that the
12 Florida Building Code be interpreted by government officials
13 who have experience in building code enforcement and the
14 commission in a manner that protects the public safety,
15 health, and welfare at the most reasonable cost to the
16 consumer by ensuring uniform interpretations throughout the
17 state and by providing processes for resolving disputes
18 regarding interpretations of the Florida Building Code which
19 are just and expeditious.

20 (2) Local enforcement agencies, local building
21 officials, state agencies, and the commission shall interpret
22 provisions of the Florida Building Code in a manner that is
23 consistent with declaratory statements and interpretations
24 entered by the commission, except that conflicts between the
25 Florida Fire Prevention Code and the Florida Building Code
26 shall be resolved in accordance with s. 553.73(9)(c) and (d).

27 (3) The following procedures may be invoked regarding
28 interpretations of the Florida Building Code:

29 (a) Upon written application by any substantially
30 affected person, state agency or by a local enforcement
31 agency, the commission shall issue declaratory statements

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1 pursuant to s. 120.565 relating to the enforcement or
2 administration by local governments of the Florida Building
3 Code.

4 (b) When requested in writing by any substantially
5 affected person, state agency or by a local enforcement
6 agency, the commission shall issue a declaratory statement
7 pursuant to s. 120.565 relating to this part and ss. 515.25,
8 515.27, 515.29, and 515.37. Actions of the commission are
9 subject to judicial review under s. 120.68.

10 (c) The commission shall review decisions of local
11 building officials and local enforcement agencies regarding
12 interpretations of the Florida Building Code after the local
13 board of appeals has considered the decision, if such board
14 exists and if the board-of-appeals process is concluded within
15 10 business days.

16 1. The commission shall coordinate with the Building
17 Officials Association of Florida, Inc., to designate panels
18 composed of five members to hear requests to review decisions
19 of local building officials. The members must be licensed as
20 building code administrators under part XII of chapter 468 and
21 must have experience interpreting and enforcing provisions of
22 the Florida Building Code.

23 2. Requests to review a decision of a local building
24 official interpreting provisions of the Florida Building Code
25 may be initiated by any substantially affected person,
26 including an owner or builder subject to a decision of a local
27 building official, or an association of owners or builders
28 with members who are subject to a decision of a local building
29 official. In order to initiate review, the substantially
30 affected person must file a petition with the commission. The
31 commission shall adopt a form for the petition, which shall be

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1 published on the Building Code Information System. The form
2 shall, at a minimum, require the following:

3 a. The name and address of the county or municipality
4 in which provisions of the Florida Building Code are being
5 interpreted.

6 b. The name and address of the local building official
7 who has made the interpretation being appealed.

8 c. The name, address, and telephone number of the
9 petitioner; the name, address, and telephone number of the
10 petitioner's representative, if any; and an explanation of how
11 the petitioner's substantial interests are being affected by
12 the local interpretation of the Florida Building Code.

13 d. A statement of the provisions of the Florida
14 Building Code which are being interpreted by the local
15 building official.

16 e. A statement of the interpretation given to
17 provisions of the Florida Building Code by the local building
18 official and the manner in which the interpretation was
19 rendered.

20 f. A statement of the interpretation that the
21 petitioner contends should be given to the provisions of the
22 Florida Building Code and a statement supporting the
23 petitioner's interpretation.

24 g. Space for the local building official to respond in
25 writing. The space shall, at a minimum, require the local
26 building official to respond by providing a statement
27 admitting or denying the statements contained in the petition
28 and a statement of the interpretation of the provisions of the
29 Florida Building Code which the local jurisdiction or the
30 local building official contends is correct, including the
31 basis for the interpretation.

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1 3. The petitioner shall submit the petition to the
2 local building official, who shall place the date of receipt
3 on the petition. The local building official shall respond to
4 the petition in accordance with the form and shall return the
5 petition along with his or her response to the petitioner
6 within 5 days after receipt, exclusive of Saturdays, Sundays,
7 and legal holidays. The petitioner may file the petition with
8 the commission at any time after the local building official
9 provides a response. If no response is provided by the local
10 building official, the petitioner may file the petition with
11 the commission 10 days after submission of the petition to the
12 local building official and shall note that the local building
13 official did not respond.

14 4. Upon receipt of a petition that meets the
15 requirements of subparagraph 2., the commission shall
16 immediately provide copies of the petition to a panel, and the
17 commission shall publish the petition, including any response
18 submitted by the local building official, on the Building Code
19 Information System in a manner that allows interested persons
20 to address the issues by posting comments.

21 5. The panel shall conduct proceedings as necessary to
22 resolve the issues; shall give due regard to the petitions,
23 and the response, and to comments posed on the Building Code
24 Information System; and shall issue an interpretation
25 regarding the provisions of the Florida Building Code within
26 21 days after the filing of the petition. The panel shall
27 render a determination based upon the Florida Building Code
28 or, if the code is ambiguous, the intent of the code. The
29 panel's interpretation shall be provided to the commission,
30 which shall publish the interpretation on the Building Code
31 Information System and in the Florida Administrative Weekly.

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1 The interpretation shall be considered an interpretation
2 entered by the commission, and shall be binding upon the
3 parties and upon all jurisdictions subject to the Florida
4 Building Code, unless it is superseded by a declaratory
5 statement issued by the Florida Building Commission or by a
6 final order entered after an appeal proceeding conducted in
7 accordance with subparagraph 7.

8 6. It is the intent of the Legislature that review
9 proceedings be completed within 21 days after the date that a
10 petition seeking review is filed with the commission, and the
11 time periods set forth in this paragraph may be waived only
12 upon consent of all parties.

13 7. Any substantially affected person may appeal an
14 interpretation rendered by a hearing officer panel by filing a
15 petition with the commission. Such appeals shall be initiated
16 in accordance with chapter 120 and the uniform rules of
17 procedure and must be filed within 30 days after publication
18 of the interpretation on the Building Code Information System
19 or in the Florida Administrative Weekly. Hearings shall be
20 conducted pursuant to chapter 120 and the uniform rules of
21 procedure. Decisions of the commission are subject to judicial
22 review pursuant to s. 120.68. The final order of the
23 commission is binding upon the parties and upon all
24 jurisdictions subject to the Florida Building Code.

25 8. The burden of proof in any proceeding initiated in
26 accordance with subparagraph 7. shall be on the party who
27 initiated the appeal.

28 9. In any review proceeding initiated in accordance
29 with this paragraph, including any proceeding initiated in
30 accordance with subparagraph 7., the fact that an owner or
31 builder has proceeded with construction shall not be grounds

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1 for determining an issue to be moot if the issue is one that
2 is likely to arise in the future.

3
4 This paragraph provides the exclusive remedy for addressing
5 requests to review local interpretations of the code and
6 appeals from review proceedings.

7 (d) Local decisions declaring structures to be unsafe
8 and subject to repair or demolition are not subject to review
9 under this subsection and may not be appealed to the
10 commission if the local governing body finds that there is an
11 immediate danger to the health and safety of the public.

12 (e) Upon written application by any substantially
13 affected person, the commission shall issue a declaratory
14 statement pursuant to s. 120.565 relating to an agency's
15 interpretation and enforcement of the specific provisions of
16 the Florida Building Code which the agency is authorized to
17 enforce. This subsection does not provide any powers, other
18 than advisory, to the commission with respect to any decision
19 of the State Fire Marshal made pursuant to chapter 633.

20 (f) The commission may designate a commission member
21 with demonstrated expertise in interpreting building plans to
22 attend each meeting of the advisory council created in s.
23 553.512. The commission member may vary from meeting to
24 meeting, shall serve on the council in a nonvoting capacity,
25 and shall receive per diem and expenses as provided in s.
26 553.74(3).

27 (g) The commission shall by rule establish an informal
28 process of rendering nonbinding interpretations of the Florida
29 Building Code. The commission is specifically authorized to
30 refer interpretive issues to organizations that represent
31 those engaged in the construction industry. The commission

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1 shall immediately implement the process prior to the
2 completion of formal rulemaking. It is the intent of the
3 Legislature that the commission create a process to refer
4 questions to a small, rotating group of individuals licensed
5 under part XII of chapter 468, to which a party may pose
6 questions regarding the interpretation of code provisions. It
7 is the intent of the Legislature that the process provide for
8 the expeditious resolution of the issues presented and
9 publication of the resulting interpretation on the Building
10 Code Information System. Such interpretations shall be
11 advisory only and nonbinding on the parties and the
12 commission.

13 Section 5. Subsection (14) of section 553.79, Florida
14 Statutes, is amended to read:

15 553.79 Permits; applications; issuance; inspections.--

16 (14) Certifications by contractors authorized under
17 the provisions of s. 489.115(4)(b) shall be considered
18 equivalent to sealed plans and specifications by a person
19 licensed under chapter 471 or chapter 481 by local enforcement
20 agencies for plans review for permitting purposes relating to
21 compliance with the wind resistance provisions of the code or
22 alternate methodologies approved by the commission for one and
23 two family dwellings. Local enforcement agencies may rely upon
24 such certification by contractors that the plans and
25 specifications submitted conform to the requirements of the
26 code for wind resistance. Upon good cause shown, local
27 government code enforcement agencies may accept or reject
28 plans sealed by persons licensed under chapter 471, chapter
29 481, or chapter 489. A truss-placement plan is not required to
30 be signed and sealed by an engineer or architect unless
31 prepared by an engineer or architect or specifically required

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1 by the Florida Building Code.

2 Section 6. Subsections (2), (4), paragraph (a) of
3 subsection (6), subsection (11), paragraphs (b) and (c) of
4 subsection (12), and subsections (14) and (15) of section
5 553.791, Florida Statutes, are amended to read:

6 553.791 Alternative plans review and inspection.--

7 (2) Notwithstanding any other provision of law or
8 local government ordinance or local policy to the contrary,
9 the fee owner of a building, or the fee owner's contractor
10 upon written authorization from the fee owner, may choose to
11 use a private provider to provide building code inspection
12 services with regard to such building and may make payment
13 directly to the private provider for the provision of such
14 services. All such services shall be the subject of a written
15 contract between the private provider, or the private
16 provider's firm, and the fee owner. The fee owner may elect to
17 use a private provider to provide either plans review or
18 required building inspections. The local building official, in
19 his or her discretion and pursuant to duly adopted policies of
20 the local enforcement agency, may require the fee owner who
21 desires to use a private provider to use the private provider
22 to provide both plans review and required building inspection
23 services.

24 (4) A fee owner or the fee owner's contractor using a
25 private provider to provide building code inspection services
26 shall notify the local building official at the time of permit
27 application or no less than 1 week prior to a private
28 provider's providing building code inspection services on a
29 form to be adopted by the commission. This notice shall
30 include the following information:

31 (a) The services to be performed by the private

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1 provider.

2 (b) The name, firm, address, telephone number, and
3 facsimile number of each private provider who is performing or
4 will perform such services, his or her professional license or
5 certification number, qualification statements or resumes,
6 and, if required by the local building official, a certificate
7 of insurance demonstrating that professional liability
8 insurance coverage is in place for the private provider's
9 firm, the private provider, and any duly authorized
10 representative in the amounts required by this section.

11 (c) An acknowledgment from the fee owner in
12 substantially the following form:

13
14 I have elected to use one or more private
15 providers to provide building code plans review
16 and/or inspection services on the building that
17 is the subject of the enclosed permit
18 application, as authorized by s. 553.791,
19 Florida Statutes. I understand that the local
20 building official may not review the plans
21 submitted or perform the required building
22 inspections to determine compliance with the
23 applicable codes, except to the extent
24 specified in said law. Instead, plans review
25 and/or required building inspections will be
26 performed by licensed or certified personnel
27 identified in the application. The law requires
28 minimum insurance requirements for such
29 personnel, but I understand that I may require
30 more insurance to protect my interests. By
31 executing this form, I acknowledge that I have

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1 made inquiry regarding the competence of the
2 licensed or certified personnel and the level
3 of their insurance and am satisfied that my
4 interests are adequately protected. I agree to
5 indemnify, defend, and hold harmless the local
6 government, the local building official, and
7 their building code enforcement personnel from
8 any and all claims arising from my use of these
9 licensed or certified personnel to perform
10 building code inspection services with respect
11 to the building that is the subject of the
12 enclosed permit application.
13

14 If the fee owner or the fee owner's contractor makes any
15 changes to the listed private providers or the services to be
16 provided by those private providers, the fee owner or the fee
17 owner's contractor shall, within 1 business day after any
18 change, update the notice to reflect such changes.

19 (6) (a) No more than Within 30 business days after
20 receipt of a permit application and the affidavit from the
21 private provider required pursuant to subsection (5), the
22 local building official shall issue the requested permit or
23 provide a written notice to the permit applicant identifying
24 the specific plan features that do not comply with the
25 applicable codes, as well as the specific code chapters and
26 sections. If the local building official does not provide a
27 written notice of the plan deficiencies within the prescribed
28 30-day period, the permit application shall be deemed approved
29 as a matter of law, and the permit shall be issued by the
30 local building official on the next business day.

31 (11) No more than Within 2 business days after receipt

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1 of a request for a certificate of occupancy or certificate of
2 completion and the applicant's presentation of a certificate
3 of compliance and approval of all other government approvals
4 required by law, the local building official shall issue the
5 certificate of occupancy or certificate of completion or
6 provide a notice to the applicant identifying the specific
7 deficiencies, as well as the specific code chapters and
8 sections. If the local building official does not provide
9 notice of the deficiencies within the prescribed 2-day period,
10 the request for a certificate of occupancy or certificate of
11 completion shall be deemed granted and the certificate of
12 occupancy or certificate of completion shall be issued by the
13 local building official on the next business day. To resolve
14 any identified deficiencies, the applicant may elect to
15 dispute the deficiencies pursuant to subsection (12) or to
16 submit a corrected request for a certificate of occupancy or
17 certificate of completion.

18 (12) If the local building official determines that
19 the building construction or plans do not comply with the
20 applicable codes, the official may deny the permit or request
21 for a certificate of occupancy or certificate of completion,
22 as appropriate, or may issue a stop-work order for the project
23 or any portion thereof, if the official determines that such
24 noncompliance poses a threat to public safety and welfare,
25 subject to the following:

26 (b) If the local building official and private
27 provider are unable to resolve the dispute, the matter shall
28 be referred to the local enforcement agency's board of
29 appeals, if one exists, which shall consider the matter at its
30 next scheduled meeting or sooner. Any decisions by the local
31 enforcement agency's board of appeals, or local building

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1 official if there is no board of appeals, may be appealed to
2 the commission pursuant to s. 553.775 ~~553-77(1)(h)~~.

3 (c) Notwithstanding any provision of this section, any
4 decisions regarding the issuance of a building permit,
5 certificate of occupancy, or certificate of completion may be
6 reviewed by the local enforcement agency's board of appeals,
7 if one exists. Any decision by the local enforcement agency's
8 board of appeals, or local building official if there is no
9 board of appeals, may be appealed to the commission pursuant
10 to s. 553.775 ~~553-77(1)(h)~~, which shall consider the matter at
11 the commission's next scheduled meeting.

12 (14) No local enforcement agency, local building
13 official, or local government may adopt or enforce any laws,
14 rules, procedures, policies, or standards more stringent than
15 those prescribed by this section.

16 (15) A private provider may perform building code
17 inspection services under this section only if the private
18 provider maintains insurance for professional and
19 ~~comprehensive-general~~ liability with minimum policy limits of
20 \$1 million per occurrence covering relating to all services
21 performed as a private provider. If the private provider
22 chooses to secure claims-made coverage to fulfill this
23 requirement, the private provider must also maintain-7
24 ~~including~~ tail coverage for a minimum of 5 years subsequent to
25 the performance of building code inspection services.
26 Occurrence-based coverage shall not be subject to any tail
27 coverage requirement.

28 Section 7. Paragraph (d) of subsection (1) of section
29 553.80, Florida Statutes, is amended, and subsections (7) and
30 (8) are added to that section, to read:

31 553.80 Enforcement.--

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1 (1) Except as provided in paragraphs (a)-(f), each
2 local government and each legally constituted enforcement
3 district with statutory authority shall regulate building
4 construction and, where authorized in the state agency's
5 enabling legislation, each state agency shall enforce the
6 Florida Building Code required by this part on all public or
7 private buildings, structures, and facilities, unless such
8 responsibility has been delegated to another unit of
9 government pursuant to s. 553.79(9).

10 (d) Building plans approved pursuant to s.
11 553.77~~(3)~~~~(5)~~ and state-approved manufactured buildings,
12 including buildings manufactured and assembled offsite and not
13 intended for habitation, such as lawn storage buildings and
14 storage sheds, are exempt from local code enforcing agency
15 plan reviews except for provisions of the code relating to
16 erection, assembly, or construction at the site. Erection,
17 assembly, and construction at the site are subject to local
18 permitting and inspections.

19
20 The governing bodies of local governments may provide a
21 schedule of fees, as authorized by s. 125.56(2) or s. 166.222
22 and this section, for the enforcement of the provisions of
23 this part. Such fees shall be used solely for carrying out the
24 local government's responsibilities in enforcing the Florida
25 Building Code. The authority of state enforcing agencies to
26 set fees for enforcement shall be derived from authority
27 existing on July 1, 1998. However, nothing contained in this
28 subsection shall operate to limit such agencies from adjusting
29 their fee schedule in conformance with existing authority.

30 (7) The governing bodies of local governments may
31 provide a schedule of reasonable fees, as authorized by s.

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1 125.56(2) or s. 166.222 and this section, for enforcing this
2 part. These fees, and any fines or investment earnings related
3 to the fees, shall be used solely for carrying out the local
4 government's responsibilities in enforcing the Florida
5 Building Code. When providing a schedule of reasonable fees,
6 the total estimated annual revenue derived from fees and the
7 fines and investment earnings related to the fees may not
8 exceed the total estimated annual costs of allowable
9 activities. Any unexpended balances shall be carried forward
10 to future years for allowable activities or shall be refunded
11 at the discretion of the local government. The basis for a fee
12 structure for allowable activities shall relate to the level
13 of service provided by the local government. Fees charged
14 shall be consistently applied.

15 (a) As used in this subsection, the phrase "enforcing
16 the Florida Building Code" includes the direct costs and
17 reasonable indirect costs associated with review of building
18 plans, building inspections, reinspections, building permit
19 processing, provision of training courses, educational
20 materials, and public building safety awareness related to the
21 building code, and building code enforcement. The phrase may
22 also include enforcement action pertaining to unlicensed
23 contractor activity to the extent not funded by other user
24 fees.

25 (b) The following activities may not be funded with
26 fees adopted for enforcing the Florida Building Code: planning
27 and zoning or other general government activities; inspections
28 of public buildings for a reduced fee or no fee; public
29 information requests, community functions, and any program not
30 directly related to enforcement of the Florida Building Code;
31 or enforcement and implementation of any other local

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1 ordinance, excluding validly adopted local amendments to the
2 Florida Building Code and excluding any local ordinance
3 directly related to enforcing the Florida Building Code, as
4 defined in this paragraph.

5 (c) A local government shall use recognized
6 management, accounting, and oversight practices to ensure that
7 fees, fines, and investment earnings generated under this
8 subsection are maintained and allocated or used solely for the
9 purposes described in paragraph (a).

10 (8) The Florida Department of Agriculture and Consumer
11 Services shall not be subject to local government permitting
12 requirements, plan review, and inspection fees for nonoccupied
13 structures such as equipment storage sheds and polebarns not
14 used by the general public.

15 Section 8. The Florida Building Commission shall
16 expedite the adoption and implementation of the State Existing
17 Building Code as part of the Florida Building Code pursuant
18 only to the provisions of chapter 120, Florida Statutes. The
19 special update and amendment requirements of section 553.73,
20 Florida Statutes, and the administrative rule requiring
21 additional delay time between adoption and implementation of
22 such code are waived.

23 Section 9. Paragraph (c) is added to subsection (17)
24 of section 120.80, Florida Statutes, to read:

25 120.80 Exceptions and special requirements;
26 agencies.--

27 (17) FLORIDA BUILDING COMMISSION.--

28 (c) Notwithstanding ss. 120.565, 120.569, and 120.57,
29 the Florida Building Commission and hearing officer panels
30 appointed by the commission in accordance with s.
31 553.775(3)(c)1. may conduct proceedings to review decisions of

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1 local building code officials in accordance with s.

2 553.775(3)(c).

3 Section 10. Section 553.841, Florida Statutes, is
4 amended to read:

5 553.841 Building code training program; participant
6 competency requirements.--

7 ~~{1}--The Legislature finds that the effectiveness of~~
8 ~~the building codes of this state depends on the performance of~~
9 ~~all participants, as demonstrated through knowledge of the~~
10 ~~codes and commitment to compliance with code directives and~~
11 ~~that to strengthen compliance by industry and enforcement by~~
12 ~~government, a Building Code Training Program is needed.~~

13 (1){2} The commission shall establish by rule the
14 Building Code Training Program to develop and provide a core
15 curriculum and offer voluntary accreditation of advance module
16 courses relating to the Florida Building Code and its
17 enforcement ~~a system of administering and enforcing the~~
18 ~~Florida Building Code.~~

19 ~~{3}--The program shall be developed, implemented, and~~
20 ~~administered by the commission in consultation with the~~
21 ~~Department of Education, the Department of Community Affairs,~~
22 ~~the Department of Business and Professional Regulation, the~~
23 ~~State Fire Marshal, the State University System, and the~~
24 ~~Division of Community Colleges.~~

25 ~~{4}--The commission may enter into contracts with the~~
26 ~~Department of Education, the State University System, the~~
27 ~~Division of Community Colleges, model code organizations,~~
28 ~~professional organizations, vocational technical schools,~~
29 ~~trade organizations, and private industry to administer the~~
30 ~~program.~~

31 (2){5} The program shall be affordable, accessible,

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1 meaningful, financially self-sufficient and shall make maximum
2 use of existing sources, systems, institutions, and programs
3 available through private sources.

4 ~~(3)~~(6) The commission, in coordination with the
5 Department of Community Affairs, the Department of Business
6 and Professional Regulation, the respective licensing boards,
7 and the State Fire Marshal shall develop or cause to be
8 developed:

9 ~~(a)~~ a core curriculum that ~~which~~ is prerequisite to
10 initial licensure for those licensees not subject to testing
11 on the Florida Building Code as a condition of licensure.
12 These entities shall also identify subject areas that are
13 inadequately addressed by specialized and advanced courses all
14 specialized-and-advanced-module-coursework.

15 ~~(b)--A-set-of-specialized-and-advanced-modules~~
16 ~~specifically-designed-for-use-by-each-profession-~~

17 ~~(4)~~(7) The core curriculum shall cover the information
18 required to have all categories of participants appropriately
19 informed as to their technical and administrative
20 responsibilities in the effective execution of the code
21 process by all individuals currently licensed under part XII
22 of chapter 468, chapter 471, chapter 481, or chapter 489,
23 except as otherwise provided in s. 471.017. The core
24 curriculum shall ~~be-prerequisite-to-the-advanced-module~~
25 ~~coursework-for-all-licensees-and-shall~~ be completed by
26 individuals licensed in all categories under part XII of
27 chapter 468, chapter 471, chapter 481, or chapter 489 by the
28 date of license renewal in 2004. within-the-first-2-year
29 ~~period-after-establishment-of-the-program--Core-course-hours~~
30 All approved courses taken by licensees pursuant to this
31 section ~~to-complete-this-requirement~~ shall count toward

Bill No. CS for SB 520 & CS for SB 494Amendment No.  062548

1 fulfillment of required continuing education units under part
2 XII of chapter 468, chapter 471, chapter 481, or chapter 489.

3 ~~{8}--The commission, in consultation with the~~
4 ~~Department of Business and Professional Regulation and the~~
5 ~~respective licensing boards, shall develop or cause to be~~
6 ~~developed an equivalency test for each category of~~
7 ~~licensee.--Such test may be taken in lieu of the core~~
8 ~~curriculum.--A passing score on the test shall be equivalent to~~
9 ~~completion of the core curriculum and shall be credited toward~~
10 ~~the required number of hours of continuing education.~~

11 (5){9} The commission, in consultation with the
12 Department of Business and Professional Regulation, shall
13 develop or cause to be developed, or approve as a part of the
14 program, appropriate courses ~~a core curriculum and specialized~~
15 ~~or advanced module coursework~~ for the construction workforce,
16 including, but not limited to, superintendents and journeymen.

17 (6){10} The respective state boards under part XII of
18 chapter 468, chapters 471, 481, and 489, and the State Fire
19 Marshal under chapter 633, shall require specialized or
20 advanced course modules as part of their regular continuing
21 education requirements. Courses approved by the Department of
22 Business and Professional Regulation as required by the
23 respective practice acts and chapter 455 shall be deemed as
24 approved by the Florida Building Commission.

25 (7){11} The Legislature hereby establishes the Office
26 of Building Code Training Program Administration within the
27 Institute of Applied Technology in Construction Excellence at
28 the Florida Community College at Jacksonville. The office is
29 charged with the following responsibilities as recommended by
30 the Florida Building Commission and as resources are provided
31 by the Legislature:

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1 (a) Provide research-to-practice capability for
2 entry-level construction training development, delivery and
3 quality assurance, as well as training and competency registry
4 systems and recruitment initiatives.

5 (b) Coordinate with the Department of Community
6 Affairs and the Florida Building Commission to serve as school
7 liaison to disseminate construction awareness and promotion
8 programs and materials to schools.

9 (c) Develop model programs and approaches to
10 construction career exploration to promote construction
11 careers.

12 Section 11. Subsection (3) of section 553.8412,
13 Florida Statutes, is amended to read:

14 553.8412 Legislative intent; delivery of training;
15 outsourcing.--

16 (3) To the extent available, funding for outreach,
17 coordination of training, or training may come from existing
18 resources. If necessary, the Florida Building Commission or
19 the department may seek additional or supplemental funds
20 pursuant to s. 215.559(5). This section does not preclude the
21 Florida Building Commission from charging fees to fund the
22 building code training program in a self-sufficient manner as
23 provided in s. 553.841~~(2)~~(5).

24 Section 12. Subsections (9) and (15) of section
25 553.842, Florida Statutes, are amended to read:

26 553.842 Product evaluation and approval.--

27 (9) The commission may adopt rules to approve the
28 following types of entities that produce information on which
29 product approvals are based. All of the following entities,
30 including engineers and architects, must comply with a
31 nationally recognized standard demonstrating independence or

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1 no conflict of interest:

2 (a) Evaluation entities that meet the criteria for
3 approval adopted by the commission by rule. The commission
4 shall specifically approve the National Evaluation Service,
5 the International Conference of Building Officials Evaluation
6 Services, the Building Officials and Code Administrators
7 International Evaluation Services, the Southern Building Code
8 Congress International Evaluation Services, the International
9 Code Council Evaluation Services, and the Miami-Dade County
10 Building Code Compliance Office Product Control. Architects
11 and engineers licensed in this state are also approved to
12 conduct product evaluations as provided in subsection (6).

13 (b) Testing laboratories accredited by national
14 organizations, such as A2LA and the National Voluntary
15 Laboratory Accreditation Program, laboratories accredited by
16 evaluation entities approved under paragraph (a), and
17 laboratories that comply with other guidelines for testing
18 laboratories selected by the commission and adopted by rule.

19 (c) Quality assurance entities approved by evaluation
20 entities approved under paragraph (a) and by certification
21 agencies approved under paragraph (d) and other quality
22 assurance entities that comply with guidelines selected by the
23 commission and adopted by rule.

24 (d) Certification agencies accredited by nationally
25 recognized accreditors and other certification agencies that
26 comply with guidelines selected by the commission and adopted
27 by rule.

28 (e) Validation entities that comply with accreditation
29 standards established by the commission by rule.

30 (15) The commission shall by rule establish criteria
31 for revocation and suspension of product approvals as well as

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1 revocation and suspension of approvals of product evaluation
2 entities, testing laboratories, quality assurance entities,
3 certification agencies, and validation entities. Revocation is
4 governed by s. 120.60 and the uniform rules of procedure.

5 Section 13. Notwithstanding section 533.842, Florida
6 Statutes, provisions in Chapter 9B-72, Florida Administrative
7 Code, relating to local government product evaluation and
8 approval are suspended until June 1, 2005.

9 (1) The Florida Building Commission shall create a
10 product approval advisory group to conduct a study to
11 determine the effectiveness and financial impact on the
12 construction industry by the local and state product approval
13 process established in section 553.842, Florida Statutes, and
14 the requirements of Chapter 9B-72 of the Florida
15 Administrative Code. The product approval advisory group shall
16 submit its findings in a report to the Governor, the President
17 of the Senate, and the Speaker of the House of Representatives
18 by January 15, 2005. The product approval advisory group shall
19 be comprised of 13 members, 7 of whom must be current members
20 of the Program Oversight Committee of the Florida Building
21 Commission. The remaining membership of the product approval
22 advisory group shall represent the broad geographical areas of
23 the state and shall be constituted as follows:

24 (a) One member selected by the Building Officials
25 Association of Florida;

26 (b) One member selected by the Florida Construction
27 Coalition;

28 (c) One member selected by the Florida Engineering
29 Society;

30 (d) One member selected by the Florida Association of
31 the American Institute of Architects;

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1 (e) One member selected by the Florida League of
2 Cities; and

3 (f) One member selected by the Florida Association of
4 Counties.

5
6 The Chairman of the Program Oversight Committee shall serve as
7 the Chairman of the product approval advisory group and the
8 Vice Chairman shall be selected from among the remaining six
9 members selected by the entities specified in paragraphs (a)
10 through (f).

11 (2) The report submitted to the Legislature pursuant
12 to subsection (1) shall contain specific recommendations on
13 how and whether the product approval process should be
14 modified or amended to enhance and facilitate compliance with
15 Chapter 9B-72 Florida Administrative Code and section 553.842,
16 Florida Statutes.

17 Section 14. Effective January 1, 2005, all new or
18 retrofitted construction on essential facilities, as defined
19 in ASTM E 1996-02, paragraph 6.2.1.1 (enhanced protection for
20 window and door coverings), which utilizes state or federal
21 grants shall meet ASTM level E impact protections.

22 Section 15. This act shall take effect upon becoming a
23 law.

24
25
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete everything before the enacting clause

29
30 and insert:

31 A bill to be entitled

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Amendment No. _____



062548

1 An act relating to the Florida Building Code;
2 amending s. 553.37, F.S.; providing for the
3 approval, delivery, and installation of lawn
4 storage buildings and storage sheds; amending
5 s. 553.73, F.S.; providing code-amendment
6 review requirements; conforming a
7 cross-reference; amending s. 553.77, F.S.;
8 revising duties of the Florida Building
9 Commission; deleting requirements that the
10 commission hear certain appeals and issue
11 declaratory statements; creating s. 553.775,
12 F.S.; providing legislative intent with respect
13 to the interpretation of the Florida Building
14 Code; providing for the commission to resolve
15 disputes regarding interpretations of the code;
16 requiring the commission to review decisions of
17 local building officials and local enforcement
18 agencies; providing for publication of an
19 interpretation on the Building code Information
20 System and in the Florida Administrative
21 Weekly; amending s. 553.79, F.S.; exempting
22 truss-placement plans from certain
23 requirements; amending s. 553.791, F.S.;
24 providing conditions for use of private plans
25 review and inspection; conforming
26 cross-references; amending s. 553.80, F.S.;
27 authorizing local governments to impose certain
28 fees for code enforcement; providing
29 requirements and limitations; requiring the
30 commission to expedite adoption and
31 implementation of the existing state building

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062548

code as part of the Florida Building Code pursuant to limited procedures; conforming a cross-reference; amending s. 120.80, F.S.; authorizing the Florida Building Commission to conduct proceedings to review decisions of local officials; amending s. 553.841, F.S.; revising Building Code Training Program provisions; amending s. 553.8412, F.S.; conforming a cross-reference; amending s. 553.842, F.S.; adding an evaluation entity to the list of entities specifically approved by the commission; suspending a Florida Building Commission Rule relating to local product approval; establishing a product approval advisory committee to study the rule; requiring a report; requiring all new or retrofitted construction on essential facilities which utilizes state or federal grants to meet a higher standard for impact protections; providing effective dates.

Bill No. CS for SB 520 & CS for SB 494

Amendment No.



244064

CHAMBER ACTION

Senate

House

3a

BANKING AND INSURANCE

DATE: 4/20/04

TIME: 10:15 am

Senator Atwater moved the following **amendment to amendment**
(501662):

Senate Amendment (with title amendment)

On page 1, between lines 26 and 27,

insert:

Section 1. Subsections (3), (4), (5), (6), (7), and
(12) of section 553.415, Florida Statutes, are amended, to
read:

553.415 Factory-built school buildings.--

(3) ~~Within 90 days after the effective date of this~~
~~section,~~ The department shall adopt by emergency rule
regulations to carry out the provisions of this section. Such
rule shall ensure the safety of design, construction,
accessibility, alterations, and inspections and shall also
prescribe procedures for the plans, specifications, and
methods of construction to be submitted to the department for
approval.

(4) A manufacturer of factory-built school buildings
designed or intended for use as school buildings shall submit

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Amendment No. _____



244064

1 to the department ~~for approval~~ the manufacturer's plans,
2 specifications, alterations, and methods of construction for
3 any factory-built school building that has not previously been
4 submitted to the department together with the approval of a
5 certified plans examiner for such building. ~~The department is~~
6 ~~authorized to charge manufacturers a fee which reflects the~~
7 ~~actual expenses incurred for the review of such plans and~~
8 ~~specifications.~~

9 (5) The department, ~~in accordance with the standards~~
10 ~~and procedures adopted pursuant to this section and as such~~
11 ~~standards and procedures may thereafter be modified,~~ shall
12 approve or reject such plans, specifications, and methods of
13 construction. The department may delegate its plans review
14 authority to a state agency or public or private entity;
15 however, the department shall ensure that any person
16 conducting plan reviews is a certified plans examiner pursuant
17 to part XII of chapter 468. Any person employed by a municipal
18 or county government, school, or community college district or
19 a private entity who is a certified plans examiner under part
20 XII of chapter 468 may approve a manufacturer's plans,
21 specifications, and methods of construction. Approval of the
22 department shall not be given if a certified plans examiner
23 certifies that unless such plans, specifications, and methods
24 of construction are in compliance with the Florida State
25 Uniform Building Code for Public Educational Facilities and
26 ~~department rule. After March 1, 2002, the Uniform Code for~~
27 ~~Public Educational Facilities shall be incorporated into the~~
28 ~~Florida Building Code, including specific requirements for~~
29 ~~public educational facilities and department rule.~~

30 (6) The review and approval of any site plan locating
31 a factory-built school building shall be performed solely by

Bill No. CS for SB 520 & CS for SB 494

Amendment No. _____



244064

1 the school district or community college district acquiring
2 the factory-built school building. The department may delegate
3 its plans review authority to a state agency or public or
4 private entity; however, the department shall ensure that any
5 person conducting plans reviews is a certified plans examiner,
6 pursuant to part XII of chapter 468.

7 (7) A standard plan approval may be obtained from the
8 department for factory-built school buildings and such
9 department-approved plans shall be accepted by the enforcement
10 agency as approved for the purpose of obtaining a construction
11 permit for the structure itself. The department, or its
12 designated representative, shall determine if the plans
13 qualify for purposes of a factory-built school shelter, as
14 defined in s. 553.36. The department may delegate its
15 plans review authority to a state agency or public or private
16 entity; however, the department shall ensure that any person
17 conducting plans reviews is a certified plans examiner
18 pursuant to part XII of chapter 468.

19 (12) Each factory-built school building used for
20 educational purposes shall bear the insignia of the department
21 and a data plate. Application for insignia shall be made by
22 the third-party-approved inspection agency designated in
23 accordance with s. 553.37(9). The data plate shall be
24 fabricated by the manufacturer of durable material in
25 accordance with s. 553.11. Such insignia and identification
26 label shall be permanently affixed by the manufacturer in the
27 case of newly constructed factory-built school buildings, or
28 by the manufacturer or contractor performing the alterations
29 department or its designee in the case of an existing
30 factory-built building altered to comply with provisions of s.
31 1013.20.

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Amendment No. _____



244064

1
2 (Redesignate subsequent sections.)
3
4

5 ===== T I T L E A M E N D M E N T =====

6 And the title is amended as follows:

7 On page 33, line 2, after the semicolon,
8

9 insert:

10 amending s. 553.415, F.S.; deleting time
11 deadline requiring the Department of Community
12 Affairs to adopt emergency rules; deleting the
13 department's authority to charge manufacturers
14 a fee for the review of its plans and
15 specifications for construction of a
16 factory-built school building; authorizing the
17 department to delegate its authority to renew
18 plans to another entity having a certified
19 plans examiner; providing that, if a certified
20 plans examiner certifies that plans and
21 specifications of construction are in
22 compliance, the department is required to give
23 its approval; requiring that review and
24 approval for any site plan locating a
25 factory-built school building be performed by
26 the specified school district; requiring each
27 factory-built school building to bear the
28 insignia of the department and a data plate;
29 providing application for the insignia;
30 providing that the manufacturer or the
31 contractor performing the alterations to the

Bill No. CS for SB 520 & CS for SB 494

Amendment No. _____



244064

factory-built school building may permanently
affix the insignia and identification label;

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Amendment No. 454376

CHAMBER ACTION

Senate

House

3b

BANKING AND INSURANCE

DATE: 4/20/04

TIME: 10:00 am

Senator Campbell moved the following amendment to amendment (062548):

Senate Amendment (with title amendment)

On page 32, between lines 21 and 22,

insert:

Section 15. Paragraph (a) of subsection (9) and paragraph (b) of subsection (12) of section 553.504, Florida Statutes, are amended to read:

553.504 Exceptions to applicability of the guidelines.--Notwithstanding the adoption of the Americans with Disabilities Act Accessibility Guidelines in s. 553.503, all buildings, structures, and facilities in this state shall meet the following additional requirements when they provide increased accessibility:

(9) In motels and hotels a number of rooms equaling at least 5 percent of the guest rooms minus the number of accessible rooms required by the guidelines shall provide the following special accessibility features:

(a) Grab rails in bathrooms and toilet rooms that

Bill No. CS for SB 520 & CS for SB 494Amendment No.  454376

1 comply with s. 4.16.4 of the guidelines, except that the grab
2 rail on the wall that is parallel to the water closet shall be
3 located 33 inches from and parallel to the finished floor,
4 measured vertically to the top of the rail with a variation of
5 not more than 1/2 inch.

6
7 All buildings, structures, or facilities licensed as a hotel,
8 motel, or condominium pursuant to chapter 509 shall be subject
9 to the provisions of this subsection. Nothing in this
10 subsection shall be construed as relieving the owner of the
11 responsibility of providing accessible rooms in conformance
12 with ss. 9.1-9.5 of the guidelines.

13 (12) Notwithstanding the requirements in references
14 4.1.3(11) and 4.16-4.23 of the guidelines, required restrooms
15 and toilet rooms in new construction shall be designed and
16 constructed in accordance with the following requirements:

17 (b) The accessible water closet shall be located in
18 the corner, diagonal to the door, and a grab rail shall be
19 provided on the wall parallel to the water closet, located 33
20 inches from and parallel to the finished floor, measured
21 vertically to the top of the rail with a variation of not more
22 than 1/2 inch.

23 Section 16. Present subsection (6) of section
24 553.5041, Florida Statutes, is redesignated as subsection (8),
25 and new subsections (6) and (7) are added to that section, to
26 read:

27 553.5041 Parking spaces for persons who have
28 disabilities.--

29 (6) Single disabled parking spaces shall have the
30 access aisle located on the passenger side of the disabled
31 parking space. A permit for restriping any existing single

Bill No. CS for SB 520 & CS for SB 494Amendment No.  454376

1 parking spaces that have the access aisle on the driver's side
2 must be applied for by June 2006.

3 (7) Owners of commercial parking lots shall obtain a
4 permit for resealing and restriping, and the lots must be
5 restriped in accordance with this section.

6
7 (Redesignate subsequent sections.)
8
9

10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 On page 34, line 19, after the semicolon,

13
14 insert:

15 amending s. 553.504, F.S.; providing guidelines
16 for grab rails in certain bathrooms and toilet
17 rooms; amending s. 553.5041, F.S.; providing
18 guidelines for access aisles for single parking
19 spaces for persons who have disabilities;
20 prescribing a deadline for applying for a
21 permit to restripe such parking spaces;
22 providing requirements for owners of commercial
23 parking lots;

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CHAMBER ACTION

SenateHouse

3c

BANKING AND INSURANCE**DATE:** 4/20/04**TIME:** 8:00 am

Senator Margolis moved the following amendment to amendment
(062548):

Senate Amendment (with title amendment)

On page 32, between lines 21 and 22,

insert:

Section 15. Paragraph (c) of subsection (1) of section
633.539, Florida Statutes, is amended to read:

633.539 Requirements for installation, inspection, and
maintenance of fire protection systems.--

(1) The requirements for installation of fire
protection systems are as follows:

(c) Equipment shall be installed in accordance with
the applicable standards of the National Fire Protection
Association and the manufacturer's specifications, and the
installation shall be undertaken by a fire protection
contractor licensed under this chapter and within the scope of
licensure as defined in this subsection. The above ground
materials and test certificate required by the standards shall
be provided by a Contractor I, Contractor II, or Contractor

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1 IV. The scope of the above ground material and test
2 certificate begins 1 foot above the finished floor to and
3 including the most remote fire protection device. The
4 Contractor I, Contractor II, or Contractor V is responsible
5 for providing the underground materials and test certificate
6 as required by the standards. The scope of the underground
7 material and test certificate begins at the point of service
8 as defined in this chapter, adopted plumbing code provisions
9 notwithstanding, and finishes no more than 1 foot above the
10 finished floor. A fire protection contractor is not required
11 to assume responsibility for providing a materials and test
12 certificate on work done by others.

13 Redesignate subsequent sections.

14
15
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 On page 34, line 19, after the semicolon,

19
20 insert:

21 amending s. 633.539, F.S.; requiring that
22 installation of fire protection equipment be
23 done by a contractor licensed under ch. 633,
24 F.S.; specifying the scope of coverage of an
25 above ground materials and test certificate and
26 of an underground materials and test
27 certificate; providing that a fire protection
28 contractor is not required to assume
29 responsibility for providing a materials and
30 test certificate on work done by others;

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Amendment No. _____



105920

3d

CHAMBER ACTION

SenateHouse**BANKING AND INSURANCE****DATE:** 4/20/04**TIME:** 11:05 am

Senator Campbell moved the following amendment to amendment
(062548):

Senate Amendment (with title amendment)

On page 32, between lines 21 and 22,

insert:

Section 15. The discipline of accessibility shall be added to the Florida Building Code. The discipline of accessibility shall include the accessibility chief, accessibility plans examiner, and accessibility inspector. The discipline shall include at least one building official. The accessibility inspector must use a formal accessibility checklist, signed by the accessibility inspector, which must become part of the permanent plan records.

Section 16. The local building official administrator shall be the administrator for modifications to residential structures using public moneys. This administrator shall ensure that a home evaluation is made, a permit is obtained, and the work is completed in a timely manner. Whenever possible, the materials for ramps shall be concrete and

Bill No. CS/SB 520/494

3e

Senator CAMPBELL..... moved the following amendment:

BANKING AND INSURANCE

DATE: 4/20/04

TIME: 12:40 pm

amendment to amendment 062548 :
substitute for amendment :
amendment to substitute amendment :
substitute for amendment to amendment :
amendment to House amendment :
amendment to Senate amendment to House amendment :

Consideration of
this amendment
requires a 2/3 vote
of members present

Senate Amendment (with title amendment)

On page 32 between lines 21 & 22, delete

.....
.....
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.....
.....

and insert:

Section 15. The Florida Building Commission is directed to study the following issues related to the Americans with Disabilities Act, as adopted in s. 553.503, and the Americans with Disabilities Accessibility Guidelines, as adopted in s. 553.504: the placement of grab rails in water closets, the placement of access aisles for disabled parking spaces; and the "discipline of accessibility" to review building plans for accessibility. The commission must consider what the current federal law and the Florida Building Code require, if applicable, and the cost implications of any recommendations the commission may offer. The commission must report its findings and recommendations to the Legislature by December 31, 2004.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 34....., line 19....., delete after the semicolon

.....

and insert:

. Requiring the commission to study accessibility issues; requiring a report; ..

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Amendment No. _____



974908

CHAMBER ACTION

Senate

House

3F

**Consideration of
this amendment
requires a 2/3 vote
of members present**

BANKING AND INSURANCE

DATE: 4/20/04

TIME: 12:50 pm

Senator Dockery moved the following amendment: *to amendment 062548*

Senate Amendment (with title amendment)

On page ~~7~~⁹, line ~~11~~¹², after the period

insert: The provisions of this paragraph notwithstanding, within 60 days of the adoption by the International Code Council of permitted standards and conditions for unvented conditioned attic assemblies in the International Residential Code, the commission shall initiate rulemaking to incorporate such permitted standards and conditions as an authorized alternative in the Florida Building Code.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

On page 1, line 8, after the semicolon

33 7 first

insert:

providing rulemaking authority;

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Amendment No. _____



105920

1 conform to the state building code. If the structure is a
2 rental property, the portability of ramp materials must be
3 considered. The administrator may ask for bids, use a lottery
4 method, or any method necessary to complete the work in a
5 timely manner. The administrator must approve modification
6 costs, payment draws, and final payment for the work done on
7 the modifications. The administrator, when possible, shall use
8 landscaping to ensure that ramps are not obvious from the
9 street.

10
11
12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 On page 34, line 19, after the semicolon,

15
16 insert:

17 creating the discipline of accessibility within
18 the Florida Building Code; designating
19 employment specialties; providing procedures;
20 directing that the local building official
21 administrator be responsible for handicapped
22 modification of residential structures using
23 public funds; providing duties; providing
24 criteria for construction of ramps;